Abstract

Since the violent dissolution of Yugoslavia in the 1990s, the international community has invested enormous financial and political resources to stabilize and democratize the Western Balkans. This is especially true for the European Union, which has pursued a conditionality-based strategy, by promising eventual EU membership to encourage reforms related to economic development, good neighborly relations, democracy, rule of law, human rights, and transitional justice. This project analyzes this conditionality strategy in relation to transitional justice in the cases of Serbia, Montenegro, Bosnia-Herzegovina, Croatia, and Kosovo over the past 25 years. It aims to answer two interrelated questions. First, how effective has this strategy been? Second, what explains the variation in compliance across the region? By examining EU and government documents, speeches, NGO reports, and news coverage, I place each country on a scale of compliance: non, reluctant, selective, and cooperative. Through these classifications, I find that political figures' actions and rhetoric, lack of media freedom and education and impunity for war crimes are the key factors that affect a country's compliance level, and that the EU's strategy has resulted in brief, temporary moments of cooperative compliance, but has otherwise failed to cause long-term and sustained compliance. Using the sources above, combined with semi-structured interviews with CSO workers from around the region, I argue that the EU's conditionality approach has resulted in varying levels of success across the region and across time. The results of the research hold important implications for the field of transitional justice by showing the effects of an inconsistent outside-in conditionality approach to transitional justice as practiced by international organizations. It also helps us better understand the implementation of conditionality policies more broadly by demonstrating the effects of this strategy when it is led by an international organization intending to affect the domestic politics of postwar states. Lastly, this project is timely due to recent political developments in the region that showcase the lack of improvement in terms of democratic backsliding and high rates of nationalism, further reinforcing my argument that the EU's conditionality-based approach to promoting transitional justice has failed to result in significant progress over the course of the past 25 years.

25 Years of Unfinished Justice: The European Union, Transitional Justice, and Conditionality in the Western Balkans

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Table of Contents

Acknowledgements……………………………………………………………………………………......*i*

Table of Figures…………………………………………………………………………………………. *iii*

Chapter 1: An Incomplete Project: European Union Engagement and

Transitional Justice in the Western Balkans……………………………………………………….1

Chapter 2: Yugoslavia: A Historical Overview of Key Players…………………………………...29

Chapter 3: Non-Compliance in Bosnia-Herzegovina and Vučić's Serbia………………………...51

Chapter 4: Reluctant Compliance in Kosovo and Post-Milošević Serbia………………………...72

Chapter 5: Selective Compliance in Đukanović's Montenegro

and Post-Accession Croatia…………………………………………………………………………89

Chapter 6: Cooperative Compliance in Pre-Accession Croatia and

Post-Đukanović Montenegro...………………………………………………………………102

Chapter 7: Conclusions and Applications…………………………………………………….117

Bibliography……………………………………………………………………………………123

Table of Figures

Figure 1: Timeline of the Dissolution of Yugoslavia 1974-95…………………………….......38

Figure 2: Timeline of the Dissolution of Yugoslavia 1997-2008………………………….....40

Figure 3: Timeline of the EU in the Western Balkans…………………………………….....49

Figure 4: BiH Democracy Indices…………………………………………………………….57

Figure 5: Mural of Ratko Mladić in downtown Belgrade………………………………….....65

Figure 6: Graffiti in downtown Belgrade claiming Kosovo as a part of Serbia…………………...68

Chapter 1

An Incomplete Project: European Union Engagement and Transitional Justice in the Western Balkans

In 2002, the Council on Foreign Relations' Center for Preventative Action sponsored a Task Force named "Balkans 2010" to analyze the postwar Western Balkans and issue policy recommendations for international actors with the aim of stabilizing the region and supporting economic development. A telling section of the executive summary reads:

> "The Task Force's overall vision for the Balkans centers on its integration into Europe—both formally, in terms of shared structures and institutions, and informally, in terms of shared norms and ideals. A coordinated international effort with shared objectives and clear lines of responsibility can, in cooperation with reform-minded local leaders, put the Balkan states on the path to full integration with western Europe by 2010. Such an effort will encourage and assist a wide-ranging transformation of the political, economic, and legal systems in the region that will make it possible, over the next six to eight years, for the international community to reduce its presence in an orderly fashion and transfer its responsibilities to capable indigenous actors and institutions" (CFR, Center for Preventative Action 2022, 3-4).

The report went on name conditionality as the key policy for achieving this goal within the timeframe above: "The primary stick at the disposal of these stakeholders [international actors] is conditionality—the linking of international assistance to specific performance goals. Conditionality is effective when the international community speaks with one voice…" (CFR, Center for Preventative Action 2022, 8). This report is illustrative of the mindsets of many leading policymakers and political scientists in the early 2000s: with peace newly secured, stability,

development, and European integration were only some short years away (Cviic 1991; Kupchan, Fishlow, and Abramowitz 1999; Patten 2000; Rubin 1996; Tindemans et al. 1996).

Nearly 25 years after this report's publication, even a quick skim of recent news articles about the region shows that the 2010 deadline was not met. Out of the former Yugoslav states, only two (Slovenia and Croatia) have become members of the European Union (EU). Deep ethnic divisions continue to play a prominent role in the political environment of the Western Balkans. Leaders espouse ethno-nationalist rhetoric to gain and maintain power. Several countries remain far off from European integration. In Bosnia-Herzegovina (BiH), the government continues to be structured around ethnic identity, and Republika Srpska's (RS) secession has been repeatedly supported by President Milorad Dodik, calling into question BiH's territorial integrity and opening old wounds from the 1992-95 war. Dodik, in fact, is now in Russia after he was convicted in BiH of defying the orders of the EU's Office of the High Representative in February 2025—a verdict that was denounced by Serbs in RS and Serbia's President, Aleksander Vučić. Vučić and his Serbian Progressive Party (SNS) promote ethno-nationalist narratives of Serbia's role in the wars of the 1990s that are rooted in self-victimization due to the NATO bombings, glorify convicted war criminals, and deny calls for recognizing Kosovo's independence. In Kosovo, victims of the war are marginalized and used by the government to promote nationalist narratives. Relations between Kosovar Albanians and Serbs continue to be hostile; furthermore, the government's dependency on external actors makes it unable to act to address the war's lasting effects on its own. In Montenegro, former Yugoslav military officers have faced few consequences for their participation in war crimes, such as the siege of Dubrovnik, and crimes committed by the government—such as forced disappearances and deportations—have not be adequately addressed. Even in Croatia, the only country included in this study to join the EU, Serbs continue to face

harassment and discrimination in several sectors, war criminals and leaders are hailed as national heroes, and the new right-wing government seeks to ban the main Serb political party from participating in government.

While some international actors such as the United States and the United Nations have reduced their presence in the region over time, the EU has not. The EU's spending through the Instrument for Pre-Accession Assistance (IPA) has increased in BiH from approximately 50 million euros in 2007 to nearly 82 million in 2020, and in Kosovo from 62 million to 90 million euros.[1] In 2022, the EU also unveiled its Western Balkan Growth Plan, which makes the Western Balkan Six countries (Serbia, Montenegro, BiH, Albania, Kosovo, and North Macedonia) eligible to participate in a 6-billion-euro program from 2024-2027 upon having their reform agendas approved. Clearly, however, this continued engagement and increase in spending has not had the intended impact. Despite the EU's usage of conditionality policies, states do not comply with the Union's reforms in areas such as rule of law, democratization, and interethnic reconciliation. This shows that the EU's carrot-and-stick approach to coupling integration with transitional justice has thus far not been effective.

The EU's approach to transitional justice is reflective of a larger trend, in which transitional justice is increasingly becoming mainstreamed into international law and the practices of international organizations. While the promotion of norms of justice, reconciliation, and truth is a positive development, there has not been enough attention given to *how* international organizations incentivize or shape transitional justice programs in beneficiary states. This thesis aims to address this gap in the literature by analyzing the successes and failures of the EU's promotion of

[1] To view all spending documents related to IPA projects visit: https://enlargement.ec.europa.eu/enlargement-policy/overview-instrument-pre-accession-assistance_en.

transitional justice in the Western Balkans through conditionality policies over the past 25 years. In doing so, I determine the varying levels of compliance across the five case studies and describe the factors that contribute to this variety. I find that, over the past 25 years, the EU's efforts to promote transitional justice in the Western Balkans has resulted in varying effects across cases and across time. In the following chapter, I contextualize my cases by reviewing a history of the region and international actors' involvement in it. In Chapters 3 through 6 I discuss the EU's transitional justice program in each of my cases, showing that the results of this program range from non-compliance to cooperative compliance. I then conclude with a chapter summarizing my findings, stating policy implications for these findings, and opportunities for future research.

Transitional Justice and European Integration in the Balkans: Key Debates and Challenges

The violent dissolution of Yugoslavia resulted in the deaths and displacement of hundreds of thousands of people. The extremely violent nature of this event drew high levels of international attention, and, since the end of the wars, researchers have produced an abundance of literature on the postwar Western Balkans. Additionally, due to the high-profile nature of the International Criminal Tribunal for the former Yugoslavia, which (along with the International Criminal Tribunal for Rwanda) represented the first major international tribunal since the Nuremberg trials, transitional justice scholars have contributed extensive insights into transitional justice in the region and the lessons that can be learned from this case. In the following section, I review the existing literature on transitional justice both generally and specific to the Western Balkans, showing that the international community plays a critical role in promoting and implementing transitional justice. However, in the case of the Western Balkans international actors' approaches have lacked contextualization, which has led to the politicization of key transitional justice

concepts. I then review academic analyses on the roles and functions of international organizations (IOs), their usage of conditionality policies, and their relationships with the domestic politics of beneficiary states. In doing so, I emphasize IOs' roles in promoting norms, as seen in this case, where the EU promotes transitional justice norms in candidate states. Through this, I highlight the existing gap in the literature regarding the intersection of these topics, namely the effects of IO's usage of conditionality policies to promote transitional justice norms in postwar beneficiary states. This review informs the development of the theoretical framework of my examination of the effectiveness of the EU's conditionality-based approach to transitional justice in the Western Balkans.

Transitional Justice: Definitions and Goals

Transitional justice is broadly defined as the "judicial and nonjudicial processes designed to reckon with past human rights violations following periods of political turmoil, state repression, and armed conflict" (Dancy et al. 2019, 99). The literature on transitional justice largely describes similar goals: acknowledgement of past harms, accountability, prevention of future harms, and—perhaps most centrally—reconciliation. It is widely accepted that these goals contribute to long-term peace and democratization in post-conflict and post-authoritarian settings (Arthur 2009).

As transitional justice has evolved, it has become increasingly interdisciplinary. Because of this, whether transitional justice is even a distinctive "field" is called into question, as opposed to being a collection of connected theories and practices from fields such as cultural studies, development studies, education, economics, political science, legal studies, sociology, psychology, history, and theology (Bell 2009, 9). Furthermore, "transitional justice as a field is understood to comprise both a sphere of practice or activity and a sphere of academic knowledge, with a praxis

relationship between the two" (Bell 2009, 7). It can be seen as a subfield of human rights law, humanitarian law, and international criminal law which comes into play specifically during political transitions (Bell 2009, 22), and connects most closely with peacebuilding because both are "discourses and practices of intervention aimed at (post)violent societies: transitional justice is intended as a set of mechanisms aimed at confronting and dealing with human rights abuses and atrocities, whilst peacebuilding is more wide-ranging but often aimed at strengthening institutions as a means of preventing further violence" (Baker and Obradovic-Wochnik 2016, 281). Ideally, these two fields work together to address past harms, promote reconciliation and truth-telling, and build long-term and sustainable peace through reparations and institutional reforms.

At times, however, tension arises between the two fields. This can happen when there are competing demands for peace and justice, such as when the threat of prosecutions and truth commissions disincentivizes political leaders to negotiate and sign peace agreements. This can be further impacted by the behavior of international actors, who depending on the case may prioritize one goal over another (Baker and Obradović-Wochnik 2016, 283–90). As these authors make clear, there are a myriad of approaches to transitional justice—many of which borrow theory and practice from other disciplines. They emphasize the connections between transitional justice and international intervention in post-conflict societies, which shows the centrality of internationalism to any discourse related to transitional justice. In terms of the goals of transitional justice, scholars largely agree that the central goals are reconciliation, justice, and peace. However, how these goals are achieved or what they even mean is up for debate. Because these goals are "inextricably intertwined" in post-conflict settings, some scholars work to place emphasis on the synergies with peacebuilding, which aims to promote sustainable and long-term peace (Lambourne 2014, 19-22). However, pursuing reconciliation and accountability simultaneously can be challenging, as these

goals can often contradict one another (Leebaw 2008). Additionally, common transitional justice mechanisms such as trials and truth commission can affect a political community's ability to overcome conflict positively or negatively (Minow 2000).

The Effectiveness of Transitional Justice

When discussing the differing often-competing understandings of transitional justice, it can be helpful to consider how some mechanisms can be more effective than others depending on the goals of the project. A main subfield of transitional justice focuses on the idea of legal solutions, such as prosecutions and amnesties. International criminal law as a form of transitional justice emerged from the Nuremberg Trials following World War II, when the Allied powers prosecuted Axis officials in what was then a novel way hold aggressors accountable for atrocities. The next wave of transitional justice prosecutions happened in the 1970s and 1980s—this time in the form of domestic trials in Latin America and Eastern Europe during the decline and eventual collapse of the Soviet Union (Teitel 2014, 75). The Cold War environment prevented major international prosecutions from happening until the 1990s, however. The ICTY and ICTR (both created in the mid-1990s) were the next major international tribunals. Through these two tribunals, one can trace the evolution of international criminal law from the temporary *ad hoc* form it held at Nuremberg—where issues of legitimacy and accusations of "victors' justice" were raised (Sands 2003)—to the ICTY and the ICTR, which contributed to the creation of the permanent International Criminal Court and broadened the definition of crimes against humanity to acts that could also be perpetrated during peacetime (Sands 2003). This increase in international prosecutions has led some scholars to argue that states are always obligated to prosecute perpetrators of human rights violations, even if these prosecutions negatively affect the peace process. When states are either

unable or unwilling to pursue prosecutions, the international community should step in to hold perpetrators legally accountable because this will establish a strong sense of the rule of law and deter future perpetrators who would know that they would certainly face legal retribution (Orentlicher 1990, 2561-62).

As seen in the case study of the Western Balkans, this approach can negatively impact reconciliation and healing, however. As an alternate option, some scholars argue that amnesties can be more effective when states are either unable or unwilling to prosecute perpetrators (Bell 2009; Dancy et al. 2019; Grodsky 2009; Jeffery 2014; Skaar 2013). Amnesties are used to protect perpetrators from legal retribution, serving as a political tool in negotiations to secure peace agreements and to transition from an authoritarian regime to democracy. In addition to being a major bargaining chip, amnesties can help former combatants reintegrate into society and avoid further destabilization (Jeffery 2014, 38-4). However, human rights advocates argue that amnesties create a culture of impunity for perpetrators, undermine the rule of law, and block victims from receiving justice. Additionally, when amnesties are enacted by an outgoing authoritarian regime the international community may view the amnesty as illegitimate (Jeffery 2014, 35–40). In a study on the effects of prosecutions and amnesties, scholars found that prosecutions tend to result in a decline in "physical integrity" violations, such as "political imprisonment, torture, unlawful killing, and disappearance" (Dancy et al. 2019, 100), while amnesties result in stronger protections for civil and political rights because of the stability they provide (Dancy et al. 2019, 103). The abundant literature on legal forms of transitional justice reflects the ongoing debates over the effectiveness of various mechanisms. Through this, one can see that the practice of prosecutions—especially international prosecutions—is of central importance to the field, and that the application of this type of justice remains debated.

In addition to prosecutions and amnesties, other widely used transitional justice mechanisms are truth and reconciliation commissions (TRCs). TRCs can come in many forms but are generally "bodies set up to investigate a past history of violations of human rights in a particular country—which can include violations by the military or other government forces or by armed opposition forces" (Avruch 2010, 34). TRCs aim to construct a cohesive narrative of a society's history, but they also have an identity-formation function, in that reconciliation requires a form of identity reconstruction on the part of the victim (Avruch 2010, 46). Hayner (2010) expands on this by setting up clear parameters: "A truth commissions is (1) focused on past, rather than ongoing, events; (2) investigates a pattern of events that took place over a period of time; (3) engages directly and broadly with the affected population, gathering information on their experiences; (4) is a temporary body, with the aim of concluding with a final report; and (5) is officially authorized by the state under review" (Jeffery 2014).

Because TRCs aim to construct a "truthful" narrative, it must be noted that the value of truth-telling in post-conflict settings is debatable. One issue lies in the problem of multiple truths because various actors may have varying perspectives, which leads to different truths for different people (Daly 2008, 25). Additionally, "even in situations where the truth is not new to the victims, many victims may not be psychologically able to deal with public attention to the truth or the process of remembering and recounting violations," and if there are minimal opportunities for victims to receive justice either due to lack of political will or resources, truth may cause further harm (Daly 2008, 31). Furthermore, uncovering one truthful narrative may cause harm when it comes to reconciliation. Although reconciliation is often listed as a goal of TRCs—and transitional justice in general—it too is a complicated concept. Reconciliation can range from "thin" to thick: thin definitions include "the imperative of compromise in the name of stability" and "the long-

term aspiration for political community based on consent and shared norms" (Skaar 2013, 65), while thick definitions are more difficult to fully describe but include concepts such as mutual healing, forgiveness, mercy, and harmony. Especially for thick definitions, reconciliation can be understood as both a goal and a process (Skaar 2013, 66). It must be noted that creating one universal definition reconciliation, especially in relation to thicker understandings of the term, can be problematic because it can have different meanings depending on the cultural context (Skaar 2013, 65).

Both legal forms of transitional justice and TRCs tend to have top-down approaches, meaning that they are often set up either by external, international actors, or the incoming regime following the end of the conflict or the collapse of the authoritarian regime. Other transitional justice approaches recognize the importance of engaging with local communities through grassroots efforts. Recent literature on transitional justice in particular offers critiques of state-centered efforts and instead propose a more "transformative" approach that is contextualized within local cultures and situations. Paul Gready and Simon Robins (2014) put forth the argument that "transitional justice has become part of a hegemonic discourse that links development and peacebuilding to a liberal state-building project that sees liberal democracy as its endpoint" (341). An alternative approach moves toward transformative justice, which focuses on "a more bottom-up understanding and analysis of the lives and needs of populations" (Gready and Robins 2014, 340). Similarly, in more recent decades, transitional justice has begun moving beyond a "thin" and legalistic understanding of transitional justice, toward a "thicker" understanding, which places it in the context of local culture and practice and engages with civil society and local actors. This form of thicker transitional justice prioritizes participation by the community and intersects with efforts to tangibly improve the local communities' quality of life through an interdisciplinary

approach that ties into development and public health (McEvoy 2007, 418). Overall, participatory forms of transitional justice can have more positive impacts when it comes to reconciliation and systemic reforms, as it encourages local ownership over the process of moving forward (Lundy and McGovern 2008). In the case of the Western Balkans, examples of this bottom-up approach include the efforts of organizations and movements, including the Women in Black, which protested the wars in the 1990s and advocated or accountability following the end of the wars; and Youth Initiative for Human Rights, a youth-led organization that aims to educate people on the events of the 1990s, promote regional reconciliation, and protest the glorification of war criminals (Daly 2008).

In summary, scholars of transitional justice continue to debate the effectiveness of various mechanisms, and, in doing so, highlight two distinct approaches: top-down, institutionalized and legal mechanisms on the one hand, and bottom-up, grassroots movements on the other. The issue of whether prosecutions succeed in promoting justice and rule of law or if they result in increased instability due to their politicization continues to be of high interest to scholars. This is strongly connected to the discussion of the role of international organizations' efforts to affect the behavior of government institutions. The Western Balkans represents an excellent case study for these issues, as international organizations have been highly involved in the region's transitional justice program (mainly through the ICTY). In the following section, I provide an overview of transitional justice efforts in the region, emphasizing the influence of international actors and the legacy of the ICTY.

Challenges of Transitional Justice in the Balkans

Reflecting the academic focus on legalistic forms of transitional justice, much of the discourse on postwar justice in the Western Balkans revolves around the controversial legacy of the ICTY. The Court was first proposed as early as 1991 by a Yugoslav reporter Mirko Klarin, who called for an "objective assessment by impartial foreign experts in international laws of war. A tribunal, in other words, similar to the one at Nuremberg" (Futamura 2007, 26). In 1992, the Helsinki Committee of Human Rights Watch published a report on the war crimes being committed in Bosnia and called on the UN "to establish such a tribunal and to prosecute, adjudicate and punish those responsible for war crimes starting with those with the highest level of responsibility for the most egregious crimes" (Futamura 2007, 26). In August 1992, the U.K.-based Independent Television News published photographs of Omarska, a Serb detention camp for Muslim Bosniaks that was reminiscent of the concentration camps set up by the Nazis in World War II. The media increasingly compared the situation in BiH to World War II and called for a tribunal like Nuremberg to hold the perpetrators of these atrocities accountable (Futamura 2007, 27). In 1993, the UN adopted resolution 808 which "decided the establishment of an international tribunal for the conflict in the former Yugoslavia."[2] While this new tribunal was based on the Nuremberg court, it also differed in some important respects: the statute was changed to avoid *ex post facto* jurisdiction issues, protect the rights of the accused, and to avoid accusations of "victors' justice" (Futamura 2007, 27).

Because there are different interpretations of the goals of the ICTY it is difficult to evaluate its effectiveness. One goal the ICTY had was to create or maintain peace.[3] However, the ICTY was

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[2] UNSC Resolution 808. 1993. https://digitallibrary.un.org/record/243008?ln=en&v=pdf.
[3] *UNSC Resolution 827*. 1993. https://www.icty.org/x/file/Legal%20Library/Statute/statute_827_1993_en.pdf.

created in 1993 and the war in Bosnia did not end until 1995. It does not seem that the possibility of legal prosecution deterred individuals from committing human rights violations, at least in the short term. Similarly, although by then several Serbs had been accused and some extradited to the Hague, the existence of the ICTY did not prevent Serbs from committing more atrocities in Kosovo in 1998-99 (Barria and Roper 2005, 358). Despite the fact that reconciliation was never expressly cited in the Court's mandate, many scholars and activists expected the ICTY to promote this goal (Barria and Roper 2005, 362-3). Because many key actors in the region perceived the ICTY to be biased, cooperation with it became highly politicized, and "ICTY prosecutions created a situation in which the states felt that they were victims of the international community, although individuals and not the entire states were punished for crimes against humanity" (Griessler 2020, 32). Especially in Serbia and Croatia—the two countries with the most war crimes convictions and which are often seen as the perpetrators of the wars—governments tended to comply with the ICTY only to appease external actors, rather than in good faith. This led to performative compliance at best, and few genuine attempts to acknowledge accountability, which in turn negatively impacted reconciliation (Grodsky 2009, 688). A prime example of the impact of external pressures to comply with the ICTY on the internal politics of a country was the assassination of Serbian Prime Minister Zoran Đinđić by the Serbian security forces after he extradited Milošević to the Hague following intense pressure by the international community. (Griessler 2020, 50).

In terms of legitimacy, perceptions of the ICTY are shaped by the socio-economic factors in which the Court's constituencies reside, which is largely based on their country of residence. The Court's treatment of one's ethnic compatriots and the narratives it constructs through its treatments of representatives of ethnic groups as either "defeated" or "defended" strongly

influence how one perceives the Court and the level of legitimacy one ascribes to it. In study completed between the years of 1997 to 2005, researchers used polling data of citizens from Sarajevo (BiH), Zagreb and Vukovar (Croatia), Belgrade (Serbia), and Priština (Kosovo) and found that Serbs are typically seen as "defeated," while Bosniaks and Kosovar Albanians are the "defended" and Croats are a little of both. As a result, Serbs are most critical of the ICTY, Bosniaks/Albanians are least critical, and Croats are somewhere in between (Ivkovich and Hagan 2011, 81-82).

Due to the lack of widespread support for the ICTY, attempts have been made to implement additional transitional justice in the former-Yugoslav states that is more locally owned. An example of this is the Regional Commission for Establishing the Facts about War Crimes and other Gross Violations of Human Rights Committed on the Territory of the Former Yugoslavia (RECOM). RECOM began in 2008 as a grassroots approach to a truth commission that was victim-oriented and regional. However, its failure to gain recognition of international organizations and state governments meant that it did not have a strong legal foundation for its fact-finding mission and was lacking in financial resources. In an attempt to fix these issues, the leading coalition of organizations—led by the Humanitarian Law Centre—shifted its approach in order to institutionalize RECOM, which in turn made it lose its victim-centered approach as it worked to gain the recognition and favor of governments (Kurze 2012, 244-5). Further, RECOM's struggles to define victimhood posed another challenge to its legitimacy in the region: for example, while veterans' groups hold significant power in the region and are eligible for state pensions, civilian victims are often marginalized by the state. RECOM struggled to reconcile these two definitions of victimhood (military and civilian) and a telling result of this was that the Mothers of Srebrenica

movement did not officially participate as a coalition member because they demanded that the definition of victim revolve exclusively around noncombatants (Kurze and Vukusic 2013, 211).

As the literature on both the ICTY and RECOM shows, transitional justice and reconciliation in the Western Balkans are controversial processes that have complicated legacies in the region. What these two examples have in common is their focus on the elite-level, an approach further exemplified by the EU's promotion of good neighborly relations, which policymakers hope will eventually turn into regional reconciliation. However, some argue that this form of liberal peacebuilding, which focuses on strengthening institutions, lacks engagement with the people of the region and is decontextualized from the region's culture, history, and identity. Even as civil society organizations (CSOs) have increasingly received grant funding for the EU in recent years for transitional justice-related projects, scholars claim that this causes CSOs to change their programming to fit within the EU's requirements, which contradicts the original aim of supporting locally-led initiatives (Griessler 2020, 22).

The gap between domestic norms related to facing the past and international transitional justice norms is illustrated by the 2010 Serbian parliamentary debate to condemn the Srebrenica genocide. The resolution was introduced by President Boris Tadić himself, who argued that this "would be an obligation of the tribunal in The Hague—leaving unclear which one he meant—and that with 'a policy of respect for foreign victims it is possible to gain credibility for the pursuit of national politics at the international level'" (Mehler 2012, 130). It passed months later as a watered-down version with 127 out 250 votes in the parliament. While the EU and several Western leaders praised this resolution, victims' groups in BiH condemned it for using terms such as "tragedy" and "crimes" instead of calling it a genocide (Mehler 2012, 131-2). The parliamentary debate shows how transitional justice has become characterized as an obligation to the

international community. This form of conditionality—explored in more depth in the following sections—meant that compliance with transitional justice became seen as a betrayal of Serbian interests or "selling out." As seen in President Tadić's reasoning for the resolution, "this narrative of 'being (held) hostage' or 'being a victim of circumstance' was also used in part by pro-reform forces to defend unpopular policies of compliance before a domestic audience" (Mehler 2012, 146). While the case of the 2010 resolution on Srebrenica is most relevant to Serbia's case, the argument that the concepts of transitional justice and compliance with international organizations' conditional policies are seen as interconnected can be applied to the cases of Croatia, Montenegro, Kosovo, and BiH as well.

As seen in the literature above, transitional justice in the Western Balkans has been strongly influenced by international actors through the establishment of the ICTY, which is a highly politicized and controversial institution in the region. The ICTY's polarizing effect (further reinforced by international actors' attempts to enforce compliance with the Court) has led to the politicization of the concept of transitional justice as a whole, which has created challenges for local organizations and activists who attempt to promote transitional justice norms such as accountability, truth-telling, and reconciliation. In the following section, I explore further the challenges of EU enlargement (which forms the basis of the EU's conditionality approach to transitional justice), before illustrating how this process is reflective of international organizations' behavior more generally. Through this, I highlight the factors that contribute to the EU's weak conditionality approach, namely the lack of sufficient precedent for long-term success of conditionality to promote democracy as seen in the EU's Eastern Expansion of 2004, and the rise of enlargement fatigue both within the Union and outside of it.

The European Union: Identity and Enlargement

In addition to domestic pushback to transitional justice in the Balkans, there are several indications that the EU's enlargement-based approach faces internal challenges. For one, the issue of EU enlargement is closely tied to the identity of Europe as a whole, and enlarging the Union holds implications for the shifting definition of Europe. In recent decades scholars have made several important contributions to the study of European identity, especially as it relates to EU enlargement. Much of this literature focuses on the case of Turkey and the eastern expansion of 2004 of post-Soviet states. The importance of European identity is exemplified by opposition to Turkey's accession expressed by several parties but largely led by France, which often focuses either implicitly or explicitly on Turkey's Islamic culture and "Asiatic orientation." This case raises challenges to Europe's constructed identity. As argued by Annie Laurent (2005) "in the end, the Turkish question raises a crucial issue: the identity of Europe is under construction" (Guisan 2012, 98). Considering interconnected histories of Turkey and the Western Balkans, this question of identity can, at times, be applied to the region as well. This is not to say that the identities of Turkey and the Western Balkans are inherently in opposition to European identity, but this issue has caused debate among European policymakers. Additionally, while states in Western Europe have long been confident in their national identities as independent states, states in Central and Eastern Europe (especially the Balkans) have throughout history had their national identities, languages, and cultures threatened by occupying powers. The threats of annihilation and assimilation have "strengthened the bonds linking members of each individual nation to one another at the expense of class or ideological or even religious bonds. This has always posed special problems for adherents of universalist ideologists" (Cviic 1991, 9). The divide between Eastern and Western Europe is further evidenced by analysis of new member states included in

the Eastern Expansion of 2004, which shows that the EU has had a stronger economic than political impact on new members, and that new member states continue to have issues with democratic consolidation (Epstein and Jacoby 2014, 3).

Scholars argue that another key issue facing the EU and the Western Balkan candidate states is enlargement fatigue. Fragmentation and disintegration are increasingly evident (some examples include the fallout of the eurozone, the refugee/migration crises that have led to increased levels of right-wing populism and nationalism, and Brexit), which has led to fatigue, and even resistance within the Union and in candidate states. During the Eastern Expansion, the EU was able to use heavy conditionality to "induce the candidate states into extensive political, economic, administrative, institutional, and regulatory reform which transformed them not just into modern European states, but also into modern EU member states" (Economides 2020, 2; Gateva 2016). This, however, created internal issues for the Union that were framed in terms of "absorption" or "integration" capacity. In essence, absorption capacity represents the challenges of preserving the original "institutional workings, decision-making processes, and integrity in Brussels" while integrating new members (Economides 2020, 3). Crucially, for my argument, this fatigue "now constitutes a reflex toward outright obstruction of further EU expansion based on retrospective doubts about the EU's 'transformative capacity' and fear of weakening the internal integration trajectory of the existing Union" (O'Brennan 2014, 225). Other arguments explaining the lack of positive progress in the accession process include that the EU has not been clear or consistent in its demands or in its promised rewards for compliance, and that compliance is hindered by lack of rule of law and high levels of corruption—products of the long history of violence and instability in the region (Belloni 2009; Fakiolas and Tzifakis 2008; Halili 2019; Jano 2008). This analysis of policymakers' concerns regarding enlargement fatigue and reduced absorption capacity is

illustrative of several broader theories of international actors' behaviors, which is explored in the following section.

The Influence of International Organizations on State Behavior

Following a realist school of thought, which argues that states use international organizations (IOs) and international law to promote their own national interests, this project recognizes the ways in which both EU member states and Western Balkan states use the structures of the EU and the accession process to promote their own interests. As such, "international institutions are rooted in the interaction of power and national interest in the international system" (Morgenthau 1973; Carlsnaes et al., 2012, 330). However, this case also supports a strong rationalist functionalist argument, which states that "IOs and [International Institutions] provide a way for states to overcome problems of collective action, high transactions costs, and information deficits or asymmetries" in the sense that stabilizing and developing the postwar Western Balkans was (and still is) a collective European project and that Western Balkan states stand to gain significantly in terms of economic development and security by becoming a part of the collective of the EU (Carlsnaes et al., 2012, 331). Lastly, following a constructivist understanding of IOs, this project recognizes the EU's role in the norm cascade process as it "pressur[es] targeted actors [the Western Balkans] to adopt new policies and laws and to ratify treaties and by monitoring compliance with international standards" (Finnemore and Sikkink 1998, 902; Carlsnaes et al., 2012, 335). Overall, my argument that the EU's efforts to promote transitional justice in the Western Balkans has resulted in varied levels of compliance borrows from realism in highlighting the ways in which the five cases have used IOs to promote their own interests both throughout the wars of the 1990s and over the past 25 years. The rationalist functionalist argument regarding IOs—that they provide

avenues for more effective collective action—is also applicable, although it is more relevant to the EU than for my five cases. This argument is also heavily based on Martha Finnemore and Kathryn Sikkink's (1998) argument that IOs contribute to norm cascades: in this case, this is illustrated in the EU's attempts to promote transitional justice as a norm in the Western Balkans.

Conclusions

As shown above, there is abundant literature on transitional justice as both a theoretical discipline and a practical policy, which shows that the international community plays a key role in implementing transitional justice, especially when it comes to international tribunals and prosecutions. In the case of the Western Balkans, however, this form of top-down, legalistic justice has not been effective in terms of promoting accountability and reconciliation. Despite this, the EU has continued to attempt to promote this through its conditionality policies. While the EU's usage of conditionality was largely effective during the Eastern Expansion, scholars agree that: a) this conditionality has not led to long-term political improvements in the post-Soviet new member states; and b) the EU's usage of conditionality in the case of the Western Balkans is weaker, due to enlargement fatigue and reduced absorption capacity.

Several of these works contribute important insights in the reasons for the EU's failures to promote transitional justice in the region, while others laud achievements made by the EU, local leaders and organizations, and other international actors. My work builds upon these studies to connect the field of transitional justice to the study of international organizations and the usage of conditionality policies. I show that the EU has had a *varying* level of success in promoting transitional justice in the region, adding a level of nuance and complexity that is often left out of transitional justice literature related to the Western Balkans. Rather than labeling the EU's

extensive transitional justice program as either successful or unsuccessful, I highlight the range in compliance levels across cases and across time. My argument—that the EU's transitional justice program has resulted in varying levels of compliance over cases and time—considers the differing domestic contexts of each case, each case's unique relationship with the EU, and how these two factors shift over time. As such, this approach offers both flexibility as it can be tailored to each unique case, while remaining broad enough that comparisons can still be drawn between cases. Further, this contribution holds critical implications for the study of application of conditionality by IOs as they promote transitional justice norms in beneficiary states because I describe the conditions under which certain levels of compliance occur.

Methodology

I employed qualitative methods and a comparative case study approach for this project, using a combination of seven semi-structured interviews with workers at local political organizations, document comparison, and analysis of news coverage. Because my research questions aimed to uncover causal patterns and "conditional generalizations" as opposed to frequency distributions, I used a controlled comparison approach based on five cases (George 2019, 2011).

Case Selection

I selected my cases based on their geographic area (the Western Balkans) and diachronically to increase their comparability due to their likely similarity (Lijphart 1971, 698). In deciding on the number of cases, I balanced the need for variety in the cases with the need to keep my case selection narrow enough so that I could become reasonably familiar with each case in order to draw accurate and in-depth conclusions from them (Lijphart 1971). Additionally, as these cases aim to be

"building blocks" for the development of a wider theory for the usage of conditionality strategies by external actors to promote transitional justice in beneficiary states, the cases needed to "comprise an instance of the same class of events" to be fully comparable (George 2019, 10). Because of this, I chose states with a common past (violent emergence from Yugoslavia, especially violence toward one another) and a common present and future (European integration). To permit for a stronger explanatory power, I created a typological approach to explain the differences between the country cases, which I further elaborate on below.

Typology

To best express the varying ways in which these cases have responded to EU efforts to promote transitional justice policies and mechanisms through conditionality-based enlargement policies, I created four types by which to classify them ranging from non-compliance to cooperative compliance.

> *Non-Compliance*: the government did not implement EU-backed transitional justice policies/mechanisms and/or actively worked to undermine existing transitional justice mechanisms.
>
> *Reluctant Compliance:* the government reluctantly implemented some EU-backed transitional justice policies/mechanisms in some sectors while actively undermining transitional justice in other sectors.
>
> *Selective Compliance:* the government implemented some EU-backed transitional justice policies/mechanisms in sectors that align with the government's interests.
>
> *Cooperative Compliance:* the government cooperated with EU to implement most proposed transitional justice policies/mechanisms.

The dependent variable (the level of compliance) changes due to independent variables, which include key actors' usage of either reconciliatory or divisive rhetoric, official government actions (such as passing new laws, complying with the ICTY, or handling of domestic war crimes cases),

and treatment of journalists and civil society actors. I used the variety of sources listed above to classify cases by these types over time, at times splitting countries into different era-based cases when significant political developments indicated that the country shifted from one type to another. For example, pre-accession Croatia represents a different type than post-accession Croatia. This also true in Serbia, where significant backsliding has happened in the last decade, and in Montenegro, where the end of the longstanding Đukanović regime signaled a change in types.

To apply this typology to the cases it is necessary to define “EU-backed transitional justice policies/mechanisms.” A general understanding of the EU’s transitional justice goals can be found in each country’s Stabilization and Association Agreement (SAA). In the preambles of these agreements the EU highlights the importance of protections for minorities, the rights of refugees and internally displaced people (IDPs), institution-building and democratization, rule of law, and justice.[4] These preambles provide the broad transitional justice-oriented values that the EU posits as necessary for these countries to prioritize throughout the accession process. More specific obligations are listed in Title I and include cooperation with the ICTY and the Dayton Peace Accords, respect for democracy and human rights, and regional cooperation.[5] Each country also includes country-specific policies within their respective country reports which apply to each country’s unique histories and contexts.

Evidence Selection

To investigate my selected cases, I began by conducting interviews with seven individuals in the Western Balkan region who work for locally led organizations that seek to promote democracy,

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[4] All SAAs can be found on the EUR-LEX website.
[5] See Title I (General Provisions) of each Agreement linked above.

reconciliation, regional cooperation, and European integration. As I was gathering interviews, I noticed a pattern in my response rate in which, unless I had a prior connection to someone working there, it was significantly easier to reach individuals working in grassroots politics and activism than it was to reach those working at legal initiatives or more institutionalized organizations. Only later in the process did I receive a response from an EU-funded "cooperation framework" (the Regional Cooperation Council, or RCC) which was willing to provide written responses to questions but not to sit for an interview. Additionally, although I reached out to an equal number of organizations and individuals from each of the five countries, I received the highest response rate from Serbia, one each from Kosovo, BiH, and Montenegro, and no responses from Croatia. As suggested by (Bleich and Pekkanen 2013), I found the interviews particularly helpful for process tracing: the interviewees were able to draw connections between local political developments and decisions by external actors (or vice versa) that were often not explicitly described in news articles or the academic literature on the topic. Additionally, the interviewees were able to provide in-depth analyses of the most recent developments up to summer 2024—analyses that would have otherwise been unavailable due to the lack of up-to-date academic literature (Bleich and Pekkanen 2013). With the interviewees' permission, I recorded and transcribed each interview to reduce the chance that manual interview notes would be inaccurate or affected by my own biases. I included key quotes that significantly shaped my understanding of each case's political situation at the beginning of each case chapter in hopes that readers are equally influenced by these quotes as they read through the chapters.

In terms of document analysis and comparison, I used three main sources: European Commission (EC) reports, Freedom House's *Freedom in the World* report, and Human Rights Watch's *World Report* to measure levels of democracy and government actions related to human

rights (both positive and negative).[6] I chose these three sources out of a need for annual publications that could be compared year-to-year, their authoritativeness and widespread credibility, and independence from one another so that I could verify events across multiple sources. However, each of these sources comes with its own flaws. Reports by the EC are valuable only insofar as justifying the EC's decisions regarding the Western Balkans. In a study on EC reports of compliance in member states (which can be extended in this case to candidate states), it is evident the EC does not always function in a transparent manner, especially regarding its data collection and methodological practices. Further, it has a vested interest in using progress reports to justify its actions, such as rewarding or sanctioning countries (Zhelyazkova 2022). As a practicality note, these reports are also highly technical and include only major political incidents and, even for those, provide little description other than stating that they occurred. To fully understand the incidents mentioned in these reports, I found it necessary to find news reports that provided further elaboration.

To ensure a higher level of independence and to fill in gaps left by the EC reports, I relied on the two other annual reports that document progress and/or incidents related to human rights, democratization, rule of law, and justice in countries around the world. HRW is an NGO that "investigates and reports on abuses happening in all corners of the world."[7] According to its website, HRW is

> "Supported by contributions from private individuals and foundations worldwide. Human Rights Watch does not solicit or accept donations by governments, directly or indirectly. This includes governments, government foundations, and government officials. Indirect donations include those that are, or

[6] Access all *World Reports* here: https://www.hrw.org/previous-world-reports. And all *Freedom in the World* reports here: https://freedomhouse.org/reports/publication-archives.

[7] Human Rights Watch. *About Us: Who We Are*. https://www.hrw.org/about-us.

> appear to be, made on behalf of a government or government official through an immediate family member, another intermediary, or a foundation."[8]

HRW's research methodology is based on in-field research done by researchers who work alongside local journalists, activists, lawyers, and state/government officials and conduct secondary research using domestic legislation, media reports, policy and academic papers, government reports, conviction and sentencing materials, and reports by international organizations to document and monitor human rights abuses and violations of international law.[9]

I also used Freedom House's *Freedom in the World* report, which covers all countries from 2000 to 2024 with a standard methodology. Freedom House is a US-based organization that combines research and advocacy to support and defend democracy around the world.[10] It has published the *Freedom in the World* report since 1973, which "assesse[s] the condition of political rights and civil liberties around the world."[11] The report includes assessments of "electoral process, political pluralism and participation, the functioning of the government, freedom of expression and of belief, associational and organizational rights, the rule of law, and personal autonomy and individual rights"[12] derived from a combination of in-field research, consultations with local actors, and secondary research.[13]

Although I used both *The World Report* and *Freedom in the World* extensively and believe that the content from these reports is mostly credible and reliable, it is also necessary to note that no source is flawless: as NGOs which are committed to promoting human rights and democracy,

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[8] Human Rights Watch. *Financials*. https://www.hrw.org/financials.
[9] Human Rights Watch. *Our Research Methodology*. https://www.hrw.org/our-research-methodology.
[10] Freedom House. *About Us*. https://freedomhouse.org/about-us.
[11] Freedom House, *Freedom in the World*, https://freedomhouse.org/report/freedom-world.
[12] Ibid.
[13] Ibid.

both organizations can, at times, struggle to reconcile the goals of political advocacy and objective research (Haas 2024). To fill in the gaps in these reports—which provide very short snapshots of each case each year—and to diversify sources and verify information, I used additional sources, including a variety of news articles (often published by the Balkan Investigative Reporters Network, Radio Free Europe/Radio Liberty, European Western Balkans, and Reuters) for major developments and secondary interviews, as well as academic journal articles and books for analyses of larger trends over time and profiles on key actors.

In the following chapters, I apply this methodological approach to analyzes the successes and failures of the EU's transitional justice program in the Western. The following chapter includes a historical background on Yugoslavia, focusing on international interventions both during and after its dissolution in the 1990s. Through this, I set up the following case study chapters by establishing the relationship between the EU and each case, and the roles of each case in the wars of the 1990s. Chapter three (the first case chapter) illustrates non-compliance through the cases of BiH (2000-25) and past decade of Serbia under Aleksander Vučić (2016-25). These two cases showcase the EU's inability to enforce even reluctant compliance in states that either unable or unwilling to implement transitional justice. Next, in Chapter four, reluctant compliance is shown in Kosovo (2000-25) and post-Milošević Serbia (2000-15) through the respective case's incomplete implementation of transitional justice in some sectors, often done to gain favor with the EU. Chapter five explores the category of selective compliance, as seen in Montenegro under the longstanding Đukanović regime and in post-accession Croatia. In this case, it is evident that government leaders implemented exclusively transitional justice that already aligned with the government's narrative of the wars. Lastly, in Chapter six, I explore cooperative compliance

exemplified by Montenegro in recent years after the end of the Đukanović regime, and pre-accession Croatia (2000-13). Cooperative compliance illustrates the most effective case of the EU's conditionality approach, in which the respective cases worked to implement the EU's promoted transitional justice reforms and progressed in the accession process accordingly. Through these chapters, I show that the EU's conditionality approach to transitional justice in the Western Balkans has resulted in varying levels of compliance across cases and across time.

Chapter 2

Yugoslavia: A Historical Overview of Key Players

It is common for discussions about the violent dissolution of Yugoslavia in the 1990s to either explicitly or implicitly state that the eruption of nationalism and independence movements was a sudden occurrence (S. Stojanovic 1995, 355). Alternatively, other approaches to the topic of the Western Balkans assume that ethnic hatred has always been present and will likely always continue to drive conflict in the region (The New York Times 1991). Both assumptions are problematic in that they tend to overlook the larger historical contexts in which tensions arose as a response to legitimate concerns over economic issues and the preservation of national identity throughout history. This is not to say that violence was inevitable. Rather, it is important to understand and acknowledge the prior historical conditions that created the context in which the wars broke out, and in which nationalism continues to cause divisions in the region to this day.

This chapter begins with a historical overview of the region, starting with its emergence from the Ottoman and Austro-Hungarian empires at the end of the nineteenth century and ending with the dissolution of Yugoslavia at the end of the twentieth century. I then outline the international responses throughout the wars of the 1990s and various actors' subsequent engagement in the region throughout the postwar period, particularly in relation to transitional justice. In doing this, I show that international interventions in the region, whether they be imperial in nature or with the aim stabilizing and ending conflict, have played a crucial role in creating the dynamics present today. Furthermore, these more recent interventions have been highly

transitional justice-oriented in that they have sought to end violent conflict and hold those responsible accountable.

The Balkans 1878–1999: The Creation and Destruction of Yugoslavia

Within just over one century, the territory of the former Yugoslavia, known today as the Western Balkans, underwent significant changes. During this period, nations emerged from empires, joined together to form two different versions of Yugoslavia, and then broke apart into smaller states once again. This period was marked by cycles of violence, including the first incorporation of Kosovo into Serbia, both world wars, and the disintegration of Yugoslavia in the 1990s. Below, I describe these events in more detail, beginning with the end of Ottoman and Austro-Hungarian rule in the region and ending in 1999 with the end of the war in Kosovo.

The Formation of Yugoslavia

The first Yugoslavia—called the Kingdom of Serbs, Croats, and Slovenes—was composed of the borderlands of the Ottoman and Austro-Hungarian empires. The southern part of Yugoslavia, which included modern-day Montenegro, North Macedonia, Kosovo, Serbia, and BiH, was under Ottoman rule until 1878, when Serbia and Montenegro gained independence through the Treaty of Berlin. That same treaty transferred BiH to the Austro-Hungarian Empire.[14] In 1912, the Albanians revolted, which ended Ottoman control over the Balkans. The Serbs took this opportunity to incorporate Kosovo—a territory infused with cultural myths and of great religious importance to Serbs. This "incorporation" of Kosovo was incredibly violent, and created a precedent for the

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[14] *Treaty of Berlin between Great Britain, Austria-Hungary, France, Germany, Italy, Russia and Turkey*, July 13, 1878, https://content.ecf.org.il/files/M00935_TreatyOfBerlin1878ExcerptsEnglish.pdf.

indiscriminate methods the Serbian regime would use nearly a century later. Because this southern subsection of Yugoslavia emerged from the collapsing Ottoman empire, it was distinctly different from its northern counterpart: it was poorer; emerged violently; was composed of a more linguistically, culturally, and religiously diverse population; and was less connected to the European continent. In contrast, the northern section of Yugoslavia, which emerged from the Austro-Hungarian Empire after World War I, included the Croats and the Slovenes. This section was wealthier, more homogenous, and more directly connected to Europe. This contrast between the northern and southern subsections of the Western Balkans would become increasingly evident in the dissolution of Yugoslavia in the 1990s and continues to be present in regional dynamics to this day.

Although all three Christian groups—Slovenes, Croats, and Serbs—were listed in the state's name, they were not equal. Serbs made up the majority, and, because they had suffered the most causalities during World War I, saw themselves as the rightful leaders of Yugoslavia. This is evidenced in the fact that 97.5 percent of Yugoslavian generals were Serbs prior to World War II, and Serbs held the majority in most government institutions, including the Ministry of the Interior, Office of the Premier, the Royal Court, Ministry of Foreign Affairs, Ministry of Education, and the State Mortgage Bank (Petersen 2011, 110). This did not sit well with the Croats, who had lived as subjects under the Austro-Hungarian Empire and considered themselves more European (and therefore more advanced) than the Serbs. This led to the creation of the Ustaša, a Croatian terrorist organization, to form in rebellion to what they described as oppression by the Serbs. The Ustaša aligned themselves with Nazi Germany during World War II, and committed atrocities against Serbs, Jews, and Roma in the region, including mass killings and deportations.

When Josip Broz's (referred to as Tito) Communist party took over Yugoslavia following World War II, he handled this situation with his characteristically two-pronged approach: he killed anywhere between tens of thousands and 250,000 nationalists, while allowing each of the major ethnic groups to have its own republic. This approach coupled brutal suppression of nationalistic aspirations with a quieter acquiesce to popular demands that would be politically difficult to ignore. This led to Yugoslavia (the second version) to be composed of six republics (Slovenia, Croatia, Serbia, Montenegro, Macedonia, and BiH) and two autonomous provinces (Kosovo for the Albanians and Vojvodina for the Hungarian population) (Petersen 2011, 107-12). Following World War II, Yugoslavia was created on the convergent boundaries of two major empires, through the overlapping interests of ethnic groups, as a coalition of peoples attempting to preserve their states and nationhood. The following decades of Communist rule under Tito would freeze these tensions under socialism. But repression of nationalistic grievances rarely makes them go away, and while Yugoslavia might have represented the temporary convergence of shared interests, the end of Tito's rule created an opportunity for political leaders to play on these grievances for their own gain.

Causes of the Dissolution of Yugoslavia and the Wars

There are several explanations for the dissolution of Yugoslavia following the death of Tito. Of the many arguments put forth, the one that holds the least weight is the ancient ethnic hatreds argument. While it may, on its surface provide some answers for why the wars played out the way that they did, it offers a limited explanation for why the wars broke out in the first place. It was only through that manipulation of these pre-existing grievances by political leaders that the

tensions between ethnic groups came to play such a prominent role.[15] Other arguments—which are summarized by Jović (2001)—focus on drivers such as economics, nationalism, international politics, and the role of personalities do a better job of highlighting the causes of the wars (Jovic 2001, 101-1).

In terms of economics, the north, which had been part of the Austro-Hungarian Empire, was relatively wealthy compared to the south. Slovenia in particular, "felt not only that it would like to cut loose from Yugoslavia but that it could actually afford to do so" (Cviic 1991, 71). Additionally, it had for several years participated in good neighborly relations with Austria and Italy, and cooperated with the Alpe-Adria economic group, which was an Italian-led idea of a "working group" and included northern regions of Italy, parts of Austria and Bavaria, and regions of western Hungary (Cviic 1991, 70-1). Alone, this economic factor may not have created the context in which Yugoslavia disintegrated, but the usage of the economic situation by political leaders—especially in Slovenia which was already the most ethnically homogenous republic—turned the population in favor of independence.

Nationalism, defined as "the primacy of the national over any other interest in political activities and as a doctrine which has the creation of a homogenous nation-state at its core" (Jović 2001, 104), emerged with the fall of Communism in the late 1980s, and was crafted and shaped by intellectual elites. Due to Croatia's alignment with the Axis powers in World War II and its role in perpetrating atrocities against Serbs, "manifestations of Croat national feelings were immediately branded by the authorities as 'separatism', 'nationalist extremism' and a threat to 'brotherhood and unity' (Cviic 1991, 72). Additionally, Tito's suppression of the Croatian Spring in 1971-72—a

[15] See, for example, Robert D. Kaplan's *Balkan Ghosts: A Journey Through History*. Macmillan, 2005.

national revival movement that followed the firing of top Serb officials from the secret police—added to the growing pro-independence sentiment. In 1990, this sentiment manifested itself in the election of the Croatian Democratic Union (*Hrvatska demokratska zajednica*, HDZ) led by Dr. Franco Tuđman. For Bosnian Muslims, the rising tensions between Croats and Serbs over their national identities posed a severe threat, as BiH was sandwiched between the two countries and contained significant minority populations of Serbs and Croats throughout the country. Although they advocated for a looser confederation alongside Slovenes and Croats, their geographic position and ethnic makeup made moves for independence significantly riskier (Cviic 1991, 69-77).

The international politics argument described by Jović (2001) reads that with the fall of the Berlin Wall and the massive shifts in great power dynamics, Yugoslavia lost its strategic importance. Without the Soviet Union as a counterbalance to the West's pressures, anti-Communist sentiment grew, and with it, criticism of the overall state structure. Additionally, pressures from the International Monetary Fund beginning in the 1980s made reformists unable to function or control growing social discontent (Jović 2001, 110-11). The role of personalities also had a great deal of influence on the collapse of the state: with Tito's death in 1980, Yugoslavia lost is central leader who was the "only real decision-maker, the real sovereign in Yugoslavia. He identified the state with himself and centralized all real power in his own hands" (Jović 2001, 112). When he died, there was no constitutional mechanism to replace him. This loss, coupled with the ambitious goals of Serbian leader Slobodan Milošević, disturbed the balance between the republics and provinces, and destroyed the delicate ecosystem of cooperation between them (Jović 2001, 101-14).

Together, factors such as the economic realities of the north and south; concerns over the preservation of national identities, most importantly, the ways in which these concerns were used

by the political elite to gain power and further their own agendas; and the roles of key individuals such as Tito and Milošević created conditions in which nations within Yugoslavia felt not only that they should be independent, but that they could afford to do so. Through the actions of key leaders who preyed on pre-existing tensions between ethnic groups, these calls for independence became synonymous with ethnic nationalism, which led to the violent dissolution of Yugoslavia.

The Violent Disintegration of Yugoslavia in the 1990s

The breakup of Yugoslavia began and ended in Kosovo. In 1974, constitutional changes gave Kosovo (a province of Serbia) almost the same powers as a republic: it could veto legislation passed by Serbia at the federal level, and Serbia could not veto Kosovo legislation passed on the provincial level. After riots throughout Kosovo in the 1980s, Serbs accused Albanians of intimidation and violence, and in 1986 a group of Serbian intellectuals from the Serbian Academy of Sciences published a memorandum outlining accusations of mistreatment of Serbs in Kosovo. Additionally, it described Serbs as the victims of Tito's Yugoslavia, especially following the 1974 constitutional changes. A year later in 1987 populist Slobodan Milošević used the Kosovo issue to gain popularity and by 1989, he was elected to the Presidency and gained control over four of the eight federal units: Montenegro had always been a traditional ally, Vojvodina was already majority Serb, and in Kosovo he used force to place Serbs in positions of power. As he gained more and more control, Slovenia and Croatia advocated for a looser confederation to avoid Serbian domination. When it became clear that Milošević would not agree to that, they moved toward independence instead (Petersen 2011, 111-14).

Slovenian and Croatian Independence, 1990-91

Slovenia and Croatia both declared independence on June 25, 1991. For the first, this was a much easier process than for the latter. In Slovenia, a ten-day war commenced between the Slovenian Territorial Defense and the Yugoslav Army (*Jugoslovenska narodna armija*, JNA), in which fewer than 100 people died. The war was ended by the Brioni Agreement—signed under the political sponsorship of the European Community—on July 8, which required Slovenia and Croatia to not act on their declarations of independence for three months so that the issue could be peacefully negotiated (Silber and Little 1997, 154-68).

Croatia, unlike Slovenia, had a more significant Serb minority population, which meant that its move toward independence was more controversial. For Croatian Serbs, an independent Croatia was reminiscent of World War II Croatia under Pavelic's Ustaša, when they had been killed and deported by the thousands. As Croatia and the HDZ moved toward independence, Krajina Serbs—Croatian Serbs in the Krajina regions that had formed the borderlands of the Austro-Hungarian Empire—moved to pass a referendum to create an autonomous zone. In August 1990, the Tuđman government declared this referendum illegal and hostilities between the Croatian police and the Krajina Serbs in Knin broke out. The JNA arrived on the scene, and although they did not directly fight alongside the Serbs, there was indirect support between the two groups (Silber and Little 1997, 92-100). Hostilities continued between the Krajina Serbs (aided by the JNA) and the Croatian police.

Bosnian Independence, 1992-95

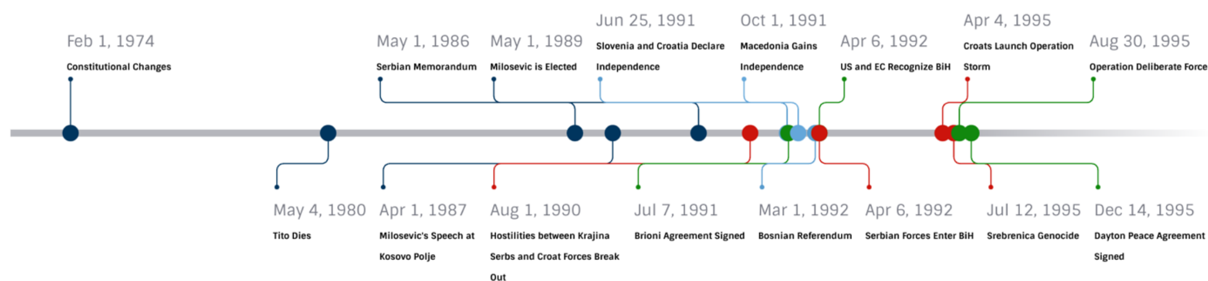
In spring of 1992, Bosnia moved to declare independence as well. In a referendum boycotted by Bosnian Serbs, Bosnian Muslims voted 99.7 percent in favor of independence in March 1992.

Violence broke out soon after, and the European Community and the United States both recognized BiH on April 6, 1992. In April, forces from Serbia proper entered the territory. Over the course of the next three years, at least 97,500 people died, many of them civilians in the first few months of the conflict. Serbs took over approximately two thirds of the territory of BiH and set up hundreds of detention camps. Hundreds of thousands of refugees flowed out of BiH or became internally displaced people (IDPs) and there was evidence that fighters used rape as a weapon of terror. The Serbs laid siege to Sarajevo, using snipers to shoot at civilians in the marketplace and on busses. The Croats also joined in, hoping to carve out an autonomous zone for themselves. In Mostar, the Croats dropped over 1,000 mortar shells in the Muslim side of the city per day.

As the international community proposed peace plan after peace plan, one of the main stumbling blocks were the ethnic pockets, which made sectioning off zones governed by each of the respective ethnic groups virtually impossible. These pockets included the Krajina enclave in Croatia, which provided support to Serbs in southern BiH, and Srebrenica and Goradze in eastern BiH, in which Bosnian Muslims broke up the territories conquered by the Serbs. In July 1995, the Croats began preparing for Operation Storm in Croatia. They ruthlessly gained control of the Krajina zone, killing anywhere between 214 and 1,192 Serb civilians (the two numbers are disputed, and were put forth by Croatia and Serbia respectively) and sending hundreds of thousands more fleeing from Croatia. The Serbs dealt with Srebrenica in a similar fashion: by 1993, 30,000 Muslims were camping out in Srebrenica, protected by the United Nations Protection Force (UNPROFOR). On July 6, 1995, the Serbs began shelling the town and took Dutch UNPROFOR personnel hostage. General Ratko Mladić entered the town and claimed victory on July 11. On July 12, 23,000 women and children were put on busses and transported out. Soon after, the Serbs slaughtered approximately 8,000 men and boys. This brutal event, in addition to a

second shelling of Sarajevo on August 28, galvanized NATO to launch Operation Deliberate Force, a bombing campaign aiming to bring the Serbs to the bargaining table. This created the conditions that forced leaders of all three groups to agree to the Dayton Peace Agreement (DPA). Dayton was signed in December 1995, and created a Federation for the Croats and Muslims, and RS. While Dayton ended the war, the central government it created was incredibly weak, and caused governance issues that BiH still struggles with today (Petersen 2011, 120-22).

Figure 1: Timeline of the Dissolution of Yugoslavia 1974-95



The Kosovo War, 1992-99

Just when the northern region of the Balkans had settled down, the instability in the south threatened to spill over into war again. In anticipation of this, US President George H.W. Bush sent what became to be known as the "Christmas Warning" to Milošević in December 1992, saying "in the event of conflict in Kosovo caused by Serbian actions, the US will be prepared to employ military force against Serbians in Kosovo and Serbia proper" (Petersen 2011, 124). This did little but give Albanians the signal that if violence broke out, they would have the US's support and led the Albanians to abandon their previously non-violent strategy under their leader, Ibrahim Rugova. As the UN worked to head off a budding conflict in Macedonia, Kosovar Albanians and the Kosovo Liberation Army (KLA) gathered strength (Petersen 2011, 124-26). On November 28,

1997, the KLA made its first public appearance and began its strategy of targeting the Serbian police. By January 1998, it had killed ten Serbian policemen and other officials, leading to what the international community labeled as a disproportionate reaction by Serbia. This would lead to just over a year of brutal warfare between the Serbian military and the KLA. In 1998, the Serbian forces killed 1,934 Albanians, many of them civilians. They burned over 40,000 houses, and more than 400,000 people were displaced.

In September 1998, the UN passed resolution 1199 to call for ceasefire and the withdrawal of Serbian forces. On October 13, NATO voted to authorize air strikes to enforce Serbian compliance. In January, Serbia moved more forces in Kosovo, some of which killed 45 civilians in the village of Racak. The head of the OSCE mission, William Walker, saw the aftermath of the massacre and reported it back to the West. This led to the Contact Group (US, UK, Italy, Germany, France, and Russia) to hold a conference with both sides of the conflict in Rambouillet, France, to give them an ultimatum. When Milošević refused to sign the agreement, NATO commenced a bombing campaign in Serbia. As the NATO bombings began in March 1999, Serbian forces increased their efforts in Kosovo. Between March and June, an estimated 10,000 Albanians were killed, soldiers repeatedly used rape as a weapon of terror, and Serbs burned and destroyed more villages. According to the UNHCR, 848,100 refugees were driven out of Kosovo into Montenegro, Albania, and Macedonia. The war ended in June 1999 with the signing of UN resolution 1244. Kosovo remained a part of Serbia (although it was clear it would not return to be under Serbian jurisdiction), and a UN mission controlled the governance of it through UN High Commissioner for Refugees (UNHCR) and UN Mission in Kosovo (UNMIK). Security for Kosovo was guaranteed through the Kosovo Force (KFOR), administered by the US, UK, France, Italy, and Germany, and the EU handled economic development (Petersen 2011, 150-63).

Figure 2: Timeline of the Dissolution of Yugoslavia 1997-2008

The Postwar Period: International Interventions in 21st Century

In the immediate postwar period, the region received immense amounts of international support largely from NATO, the US, the UN, and the EU. Together, these actors enforced compliance with the DPA in Bosnia, essentially functioned as the government of Kosovo, facilitated Montenegro's peaceful independence from Serbia, and placed pressure on the countries to comply with the ICTY. Throughout their involvement in the region, transitional justice was a key focus; this evident through their support for IDPs, funding of civil society organizations working to memorialize victims of the wars, and requirements regarding compliance with the ICTY. This is described in more detail below: I first give a general overview of transitional justice in the Western Balkans, before describing the international organizations' specific roles in the region.

Locally Led Transitional Justice

Following the wars, several civil society organizations and non-governmental organizations worked to memorialize victims and advocate for justice for survivors. Among these efforts was the "Regional Commission tasked with establishing the facts about all victims of war crimes and other serious human rights violations committed on the territory of the former Socialist Federal Republic of Yugoslavia in the period from January 1, 1991, to December 31, 2001" (RECOM) initiative. RECOM was founded by a coalition of NGOs in the region and aimed to serve as a regional truth

commission to create a cohesive narrative about the war crimes perpetrated on the territories of the former Yugoslavia. It was founded in 2008, in Pristina, Kosovo, by the Humanitarian Law Centre in Belgrade, the Humanitarian Law Centre in Kosovo, the Association of BiH Journalists, and Documenta in Croatia. It was financially supported by the EU and received political support from the European Parliament (Griessler 2020, 46-8). However, RECOM's mission of being victim centered meant that it struggled to find institutional support among the governments of the Western Balkans, leading it be unable to successfully pursue its fact-finding mission as it was unable to obtain evidence through the courts or summon witnesses. To resolve this issue, RECOM became increasingly legalistic in its approach in hopes of gaining institutional support, which led to it replicating the issues with the ICTY in that it lost its victim-centered approach.

This dilemma was highlighted in RECOM's last regional forum on transitional justice in October 2010 before the finalization of its draft statute in March 2011. In the October 2010 forum, Director of the Humanitarian Law Centre Nataša Kandic led a discussion titled "The Mandate of RECOM and its Authority with Respect to the Authority of the National Judiciary." The room the discussion was held in included one table with twenty chairs, with little room for extra chairs or standing room in the back. As an ever-growing crowd arrived, Ms. Kandic stated that the discussion would be of little interest to the press or the public (which included victims and representatives from victims' organizations) and suggested that only legal experts and practitioners should stay. During that session, they addressed the statute article on "Public Hearings of Victims and Other Persons." The discussion was led almost solely by NGO leaders and legal experts, despite the fact that the topic was on victim testimony (Kurze 2012, 258-59). This forum was representative of a pattern in RECOM's approach: although it started out victim-oriented, it

eventually became highly legalistic and focused on institutionalization, often at the expense of including victims' perspectives.

In addition to RECOM, there are many organizations that work to foster reconciliation and memorialize the past. One key example of this is the Youth Initiative for Human Rights (YIHR), which has offices in Serbia, Montenegro, BiH, Croatia, and Kosovo. The organization is guided by the basic principles of "truth, justice, accountability, equality, freedom, democracy and peace. [They] are fighting for peace in the region, not only for the absence of war, but for the peace as a lasting process which means dealing with the past and which results in continuous co-operation between the states and people in the region."[16] The organization plans events, school exchanges for students in Western Balkan countries, street actions and protests, and has appeared in both domestic and international courts in several human rights-related cases. Additionally, the Balkan Investigation Reporting Network (BIRN)—continually reports on ongoing transitional justice-related stories in a manner that is professional and independent and aims to combat misinformation put forth by nationalistic actors in the region.[17] Because of the mixed record of transitional justice in the Western Balkans and the skepticism with which most people view it, there are many organizations that do work that by definition is transitional justice, but they avoid labeling it as such.

International Interventions

The international community was highly involved in the wars of the 1990s and have stayed active in the region since then. In fact, the very idea of Western intervention was a key factor in the

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[16] Youth Initiative for Human Rights, *About Us,* https://yihr.org/about-us/.
[17] Balkan Insight, *Who We Are,* https://balkaninsight.com/about-birn/.

calculations of actors in both BiH and Kosovo. On the eve of the Bosnian referendum for independence, for example, the US calculated that quick recognition would reduce the chances of Serb aggression: US ambassador Warren Zimmerman wrote on this idea in 1999, saying:

> "I believed the early Western recognition, right after the expected referendum majority for independence, might present Milošević and Karadzic with a *fait accompli* difficult for them to overturn. Milošević wanted to avoid economic sanctions and to win recognition for Serbia and Montenegro as the successors of Yugoslavia; we could offer him that recognition in exchange for the territorial integrity of the four other republics, including Bosnia. I concede drawbacks to my proposal. In the understatement of the year, I said, "I don't deny that there is some chance of violence if Bosnia wins recognition," but I added my belief that "there is a much greater chance of violence if the Serbian game plan proceeds unimpeded" (Zimmerman 1999, 192).

Bosnian President Izetbegović took this into account when he decided to hold the referendum (Kostovićova 2014). Similarly, Kosovar Albanians and the KLA intentionally waited until the West was no longer preoccupied in BiH to escalate their actions against Serbs. The decision to escalate from nonviolent protest to violence was based on the hope that Serbia would react disproportionately, which would lead to Western intervention. One KLA commander reported that "We knew our tactics did not have any military value. Our goal was not to destroy the Serb military force [but to make it] become more vicious…. We thought it was essential to get international support to win the war" (Petersen 2011, 151-52). Similarly, Hashim Thaci, who would become Kosovo's first prime minister after independence in 2008, stated: "We knew full well that any armed action we undertook would trigger a ruthless retaliation by the Serbs against our people…. We knew that we were endangering civilian lives, too, a great number of lives" (Petersen 2011, 152). Dugi Gorani, who served as an Albanian negotiator at Rambouillet, said that "Every single Albanian realized that the more civilians die, interventions come nearer and nearer…. The more civilians were killed, the chances of international intervention became bigger and bigger, and the KLA of course realized that" (Petersen 2011, 152). Discussion of international intervention must,

therefore, consider the manipulation and politicization of international intervention by local actors throughout the wars and after.

The United Nations, NATO, and Organization for Security and Cooperation in Europe

The most high-profile transitional justice mechanism to be implemented in the former Yugoslavia was the ICTY, created by UN Security Council Resolution 827 in 1993.[18] The UN established the Court in response to "grave alarm at continuing reports of widespread and flagrant violations of international humanitarian law occurring within the territory of the former Yugoslavia, and especially in the Republic of Bosnia and Herzegovina." These violations of international humanitarian law included "reports of mass killings, massive, organized and systematic detention and rape of women, and the continuance of the practice of 'ethnic cleansing,' including for the acquisition and the holding of territory." The governments of Croatia and BiH supported the creation of the ICTY, while the Federal Republic of Yugoslavia (Serbia/Montenegro) did not. In the first two years of its existence, the ICTY issued 34 public warrants, but had no defendants in custody, leading it to have little legitimacy until 1995 when the first defendants were extradited to the Hague. The first case the court tried was of Duško Tadić in 1996 (Barria and Roper 2005, 356), the former President of the Local Board of the Serb Democratic Party (SDS) in Kozarac, RS. He was convicted in 1997 of "willful killing, torture or inhuman treatment and murder."[19] The court's jurisdiction was extended to Kosovo in September 1999 following the war, when it became clear that several of the same individuals accused of crimes in BiH were also

[18] Resolution 827 (1993) / adopted by the Security Council at its 3217th meeting, on 25 May 1993.

[19] *Case Information Sheet – Duško Tadić*. International Criminal Tribunal for the former Yugoslavia, https://www.icty.org/x/cases/tadic/cis/en/cis_tadic_en.pdf.

complicit in the atrocities perpetrated in Kosovo by the Serbian military and police force (Barria and Roper 2005, 356).

Beyond the ICTY the UN has been present in the Balkans throughout the 1990s, represented by its various missions and organizations. In BiH, the UN was present through the UN Protection Force (UNPROFOR) until the implementation of Dayton in 1995, when UNPROFOR was replaced by NATO's Implementation Force (IFOR). That same year, the UN implemented the UN Mission in BiH, which was responsible for civil and political reforms, with a focus on rule of law issues through "reforming and restructuring the local police, assessing the functioning of the existing judicial system and monitoring and auditing the performance of the police and others involved in the maintenance of law and order."[20] The mission's mandate was taken over by EU Police Mission in 2003.[21] In Kosovo, the UN created the UN Mission in Kosovo (UNMIK) through Security Resolution 1244 in 1999.[22] UNMIK's mission focuses on "promoting inter-community trustbuilding, respect for human rights and rule of law, gender equality and and empowerment of women and youth."[23] It cooperates with other international actors in Kosovo, such as NATO's KFOR, the Organization for Security and Cooperation in Europe, and EU Rule of Law Mission in Kosovo (EULEX). Other UN agencies and partners present in Kosovo include: the UN Development Program (UNDP), UN High Commission for Refugees (UNHCR), UN Children's Fund (UNICEF), and the Office of the High Commissioner for Human Rights (OHCHR).[24]

[20] UN Mission in Bosnia-Herzegovina, *Background,* *https://peacekeeping.un.org/ru/mission/past/unmibh/background.html*.
[21] *Ibid.*
[22] UN Mission in Kosovo, *Mandate*, https://unmik.unmissions.org/mandate.
[23] *Ibid.*
[24] *Ibid.*

Together, these organizations work to promote human rights and transitional justice, democracy, and region stability.

NATO's engagement in the Western Balkans has a mixed record. Its ambiguous mandate in the early 1990s prevented it from intervening in Bosnia to prevent human rights abuses. It waited until the genocide in Srebrenica and the shelling of the Markale Marketplace in Sarajevo in 1995 to carry out a bombing campaign against the Serbs. After Dayton, it deployed the Implementation Force (IFOR) in Bosnia to maintain stability. However, NATO's presence had weak support from the US, leading other European powers to also withdraw their forces. In Kosovo, NATO sought to correct its record through more decisive action. Because of Russia's Security Council veto against usage of force in Kosovo, NATO member states removed the UN from the decision-making process (Blease 2010, 5-9). NATO's air campaign ended on June 4, 1999, when Serbian forces withdrew from Kosovo. Shortly after, KFOR was deployed with the mission of establishing security, deterring future hostilities, and demilitarizing local actors. KFOR is still present today as a security force and works to maintain freedom of movement (Bajrami 2023, 138). In the sense that KFOR seeks to prevent future violence, it functions as a transitional justice actor.

The Organization for Security and Co-operation in Europe (OSCE) is also present in the Balkans. The OSCE takes on a "comprehensive approach to security that encompasses politico-military, economic and environmental, and human aspects" by "addressing a wide range of security-related concerns, including arms control, confidence- and security-building measures, human rights, national minorities, democratization, policing strategies, and counter-terrorism."[25] has been present in the Balkans since its first mission in North Macedonia in 1992, and its presence

[25] Organisation for Security and Cooperation in Europe, *Who We Are,* https://www.osce.org/whatistheosce.

in each country is based on the different needs of that country. For example, the OSCE mission in Kosovo focuses on "human and community rights, democratization, and public safety" (Mastrorocco 2020, 91), while the mission in Serbia focuses on "the development of the democratic system and rule of law in Belgrade" (Mastrorocco 2020, 91). In Montenegro, it works in areas relating to "law enforcement and security sector reform, election administration, […] judicial reform, strengthening human rights and gender equality, [and] building media."[26] In BiH, OSCE focuses on areas such as arms control, border management, conflict prevention and resolution, counterterrorism, democratization, human rights, and many more.[27] The only country that does not have a functioning OSCE mission is Croatia: the mission closed its office in 2007, and was replaced by the OSCE Office in Zagreb, which closed in 2012.[28] OSCE is transitional justice oriented in that it aims to promote reconciliation and dialogue as a way of strengthening security. It also works directly with CSOs to strengthen their capacities and to establish local ownership over the security situation (Mastrorocco 2020, 83-96).

The European Union, Conditionality, and Transitional Justice

The EU's development as an international organization paralleled the events of the 1990s. In 1999, the EU created the Stability Pact for Southeast Europe, which aimed to strengthen the new post-Yugoslav states' abilities "to foster peace, democracy, respect for human rights and economic prosperity in order to achieve stability in the whole region."[29] The Stability Pact would be taken

[26] OSCE, *OSCE Mission to Montenegro,* https://www.osce.org/mission-to-montenegro.
[27] OSCE, *OSCE Mission to BiH,* https://www.osce.org/mission-to-bosnia-and-herzegovina.
[28] OSCE, *OSCE Misson to Croatia/OSCE Office in Zagreb (closed),* https://www.osce.org/croatia-closed.
[29] Council of Europe, *The Stability Pact for Southeast Europe,* https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680651409.

over by the Regional Cooperation Council (RCC) in 2008, a "regionally owned and led cooperation framework" that "engages RCC participants from the South East Europe (SEE), members of the international community […] to promote and advance the European and Euro-Atlantic integration of the region."[30] The RCC reformed the Stability Pact to create more local ownership over the process by transferring responsibilities to local leaders.[31] In 1999, the EU also created the Stabilization and Association Process (SAP), which is "the strategic framework supporting the gradual rapprochement of the Western Balkan countries with the EU."[32] In 2000, the EU implemented the Community Assistance for Reconstruction, Democratization and Stabilization (CARDS) program, which provided significant assistance to the countries of the Western Balkans in areas relating to reconstruction, regional stability, aid for IDPs, and support for democratization, rule of law, human rights, and civil society. [33] In 2007, CARDS was replaced by the Instrument for Pre-accession Assistance (IPA). These agreements signaled Europe's commitment to long-term engagement in the region, and, through them, the EU has become the most consequential actor in the WB6, especially in regards to promoting transitional justice (Bojicic-Dzelilović et al. 2018, 7-8).

Beyond these broad agreements, the EU took on unique approaches for each country (Balázs 2014, 188). The EU's contractual bilateral relationships with each country is based on individual Stabilization and Association Agreements (SAAs), which are "based on common

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[30] Regional Cooperation Council, *About Us,* https://www.rcc.int/pages/2/about-us.

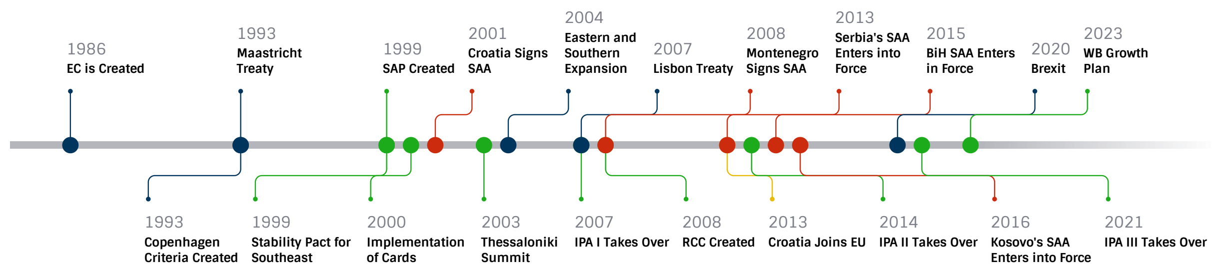
[31] *Interview with Team Leader at RCC*. Mount Holyoke College. December 16, 2024.

[32] European Parliament, *Factsheets of the EU – The Western Balkans*, https://www.europarl.europa.eu/factsheets/en/sheet/168/the-western-balkans#:~:text=Launched%20in%201999%2C%20the%20SAP,trade%20relations%20and%20regional%20cooperation.

[33]EUR-Lex, *The CARDS programme (2000-2006)*, https://eur-lex.europa.eu/EN/legal-content/summary/the-cards-programme-2000-2006.html?fromSummary=16.

democratic principles, human rights and the rule of law" (European Parliament 2024). Since Kosovo signed its SAA in 2016, all the WB6 countries have signed their SAAs and been in formal, contractual relationships with the EU (European Parliament 2024).[34] EU engagement with each individual country varied, however, based on individual countries' needs after emerging from Yugoslavia, and its willingness to cooperate with transitional justice efforts. The details of each country's unique path toward accession are laid out in the following chapters, which highlight the fact that, despite the close relationship between the accession process and implementation of transitional justice, the EU's usage of conditionality policies have not resulted in full and compliance with transitional justice-related policies by the governments of the five states included in this study.

Figure 3: Timeline of the EU in the WB



Conclusion

The violent dissolution of Yugoslavia was the bloodiest war in the Europe since the end of World War II. The region drew massive amounts of attention, as the international community proposed

[34] Slovenia is an exception, having emerged from Yugoslavia relatively peacefully and already well-connect to the rest of Europe. Slovenia held a referendum in 2003, in which a majority of its citizens voted to join the EU and it became a full member in May 2004.

peace plan after peace plan. Through the ICTY and the EU's commitments to transitional justice, it represents a crucial case study for the field of transitional justice, as it holds implications for the understanding of the effectiveness of transitional justice when it is implemented from the outside in through conditionality policies. Through the promise of membership, the EU has, at times, caused governments to comply with the ICTY and institute important reforms in areas related to democracy and human rights. However, as seen in the following chapters, whether the EU's strategy of promoting transitional justice has had varied results, leading cases to range from non-compliance to cooperative compliance over time.

Chapter 3

Non-Compliance in Bosnia-Herzegovina 2000-25 and Vučić's Serbia 2016-25

> *"Our goal is to bridge this invisible barrier, because young people often see the government as [...] untouchable, unreachable. There is no contact. There is no opportunity to change anything."*
>
> —Executive Director of Humanity in Action in Bosnia-Herzegovina.[35]

Despite the EU's high level of engagement in the region following the wars of the 1990s, some states still do not comply with the Union's transitional justice-related program. Non-compliance is defined as *the government did not implement EU-backed transitional justice policies/mechanisms and/or actively worked to undermine existing transitional justice mechanisms.* This category-type is best shown in BiH for the past 25 years, and Serbia since 2016. In BiH, non-compliance illustrated by government inaction and the attribution of transitional justice-related policies largely to the work of the EU's Office of the High Representative (OHR) on the one hand, and RS's—often represented by Milorad Dodik—continued promotion of secessionist rhetoric and concrete steps taken in more recent years on the other. In Serbia, non-compliance comes in the form of significant backsliding in relation to transitional justice and democracy, and an increase in nationalist anti-Western and self-victimizing rhetoric put forth by Aleksander Vučić since 2016.

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[35] *Interview with the Executive Director of Humanity in Action—Bosnia Herzegovina*. Mount Holyoke College. October 9, 2024.

This rhetoric often comes in the form of attempting to re-negotiate Serbs' roles in the wars of the 1990s (for example, by denying that crimes at Srebrenica constituted a genocide), glorifying war criminals, and supporting secessionists in RS. However, as is shown below, non-compliance does not necessarily lead to lack of progress in the EU accession process or harsh consequences. This highlights the inconsistent nature of the EU's conditionality policies which, in BiH, have done little to improve the political system or interethnic relations, and in Serbia have not prevented backsliding and increased nationalism.

Republika Srpska and the Looming Referendum: 25 Years of Dodik in Bosnia-Herzegovina, 2000-25

Since the end of the war in 1995, BiH has received immense levels of financial and political international support, especially from the EU, in areas relating to security, democratization, human rights, economics, and development. While there have been some improvements related to strengthening the government and protections for human rights over the past three decades, the political system remains weak, and the population is divided politically along ethnic lines. These recurring and deeply entrenched issues in BiH are representative of a lack of compliance with EU-promoted transitional justice policies. An illustrative example of BiH's lack of compliance is the repeated calls for a referendum of independence on the part of politicians from RS, mainly led by President Milorad Dodik. Although major issues persist regarding democratic governance and transitional justice, since becoming a candidate country in 2022, BiH had progressed through the accession process in recent years. This misalignment between the state of transitional justice and BiH's progress toward joining the EU represents a larger pattern within the EU's conditionality-based enlargement policies in which there is no compliance with transitional justice-related

policies despite years of EU support for these policies. Below, I first provide an overview of the Dayton Peace Agreement (DPA), describe key issues within the government structure it created, and changes to the government over time. I then analyze transitional justice and EU involvement in BiH, highlighting key moments which illustrate BiH's lack of compliance. Finally, I show recurring discrepancies between BiH's progress through the accession criteria and lack of improvement in terms of compliance.

The Dayton Peace Agreement and Governance in Bosnia-Herzegovina

The DPA successfully ended the war in BiH and set up a government that was representative of each of the three major ethnic groups (Bosniaks, Croats, and Serbs). This began in November 1995 when the United States invited the leaders of each of the three groups—Tuđman, Milošević, and Izetbegović—to Dayton, Ohio, where they agreed to recognize BiH as a sovereign country composed of two entities: the Federation for Bosniaks and Croats covering 51 percent of the territory, and RS covering 49 percent of the territory for the Serbs. In December 1995 the agreement was officially signed and came into effect.

The DPA created an incredibly complex government structure. Within the Federation there are 10 cantons, which are divided into dozens of municipalities Each canton has a government, parliament, and jurisdiction over issues such as healthcare, policing, education, and the justice sector. Meanwhile, RS has a more centralized government with just one municipal level. There are three Presidents for each of the three ethnic groups that are directly elected (Mulalıć 2009, 111). In addition to the two entities there is also the Brcko District, which is a self-governing administrative unit in northeast BiH on the border with Croatia. During the Dayton negotiations, Brcko's status was left unresolved due to its geographical placement within RS but its non-majority

Serb population. In 1999, the Brcko District was created as a multiethnic region under the control of the central BiH government. It was supervised by the UN until 2012, when full control of it was transferred to BiH's government (Peres 2018). The central government of BiH is incredibly weak because of this complex governing structure, and high levels of international intervention—largely in the form of the EU's Office of the High Representative (OHR)—have created persistent sovereignty issues (Mulalić 2009, 110-12). Additionally, some scholars argue that the power-sharing aspect of the DPA is unequal: despite ethnic cleansing and genocide, Bosnian Serbs received their own "cleansed" entity, giving them autonomy, while the Bosniaks and Croats must coexist and work with one another. Overall, the DPA effectively partitioned BiH in a manner that institutionalized ethnicity-based entities and "rewarded" ethnic cleansing (Robinson and Pobrić 2006, 237-38). Furthermore, because the national government is composed of the three presidents that represent the three groups, national parties have relied on using nationalism and ethnic enmity to gain support among their respective ethnic constituencies. This has had a strong effect on democratization and transitional justice, leading to high levels of international intervention as the international community has sought to impose these processes despite a lack of local support (Mulalić 2009, 112).

While there is no shortage of arguments criticizing the weakness of the government structures created by the DPA (e.g. Aolain 2001; Hoogenboom and Vieille 2010; M. Pickering 2006; Peres 2018; Robinson and Pobrić 2006), its evolution and improvements over the past decades deserve recognition as well. In the immediate postwar period (1996-2000) the national government was largely an empty shell, as both Croats and Serbs sought to strengthen municipal and canton-level governments where they would be able to promote their own interests more successfully. Most major laws were passed by the OHR, which also acted as an impartial arbiter

in the (frequent) cases of disputes between ethnicity-based parties. However, as new ministries relating to refugees and immigration, the treasury, and European integration were established in the early 2000s, the government strengthened. In 2002, the government established the Ministry for Justice and Security and split the Ministry for Civilian Affairs and Communication into two separate ministries. By 2004, the Ministry of Defense was established, bringing the total number of government ministries up to ten. In 2003, the security field evolved as well: the entities' intelligence agencies dissolved and were replaced by a joint command for the armed forces, meaning that defense was no longer an entity-level issue but a federal-level issue instead. Policing also switched to be state-level rather than entity-level, which took a way a main power source for nationalists (Bieber 2008, 18-20). However, considering that these improvements were directly tied to the powerful OHR mandate, and the fact that during this time politicians continued to use nationalist rhetoric to gain power and journalists reporting on issues related to the recent wars were harassed and threatened, these improvements do not result in significant enough progress to move BiH from the non-compliant classification.[36] As further explained below, transitional justice efforts in BiH have been relegated to civil society organizations and activists (who are often subject to harassment and intimidation by government officials) and international actors.

Transitional Justice in Bosnia-Herzegovina

Beyond creating democratic institutions and a constitution, the DPA offers little direction regarding transitional justice. Instead, the ICTY served as the main vehicle for justice in BiH. Although diplomats and supporters of the Court argued that its mandate should be expanded to include

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[36] See *Freedom in the World* and *The World* reports for BiH during these years for examples of specific incidents.

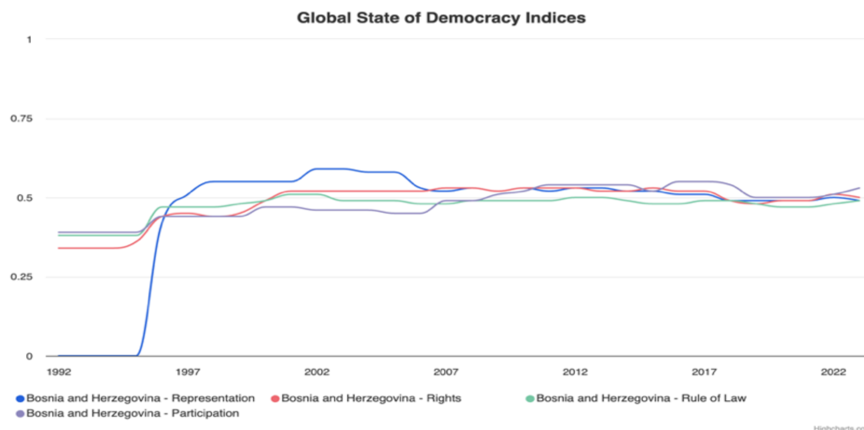
reconciliation between warring groups as a goal, ultimately there was no mention of reconciliation in the ICTY's mandate. Connections between the Bosnian judicial sector and the Court were weak, especially in the early years of the Court's existence, and legal professionals in the region felt marginalized throughout the process, leading to a disconnect between the Court's proceedings in the Hague and on-the-ground perceptions of justice in BiH. Furthermore, the decision by the international community to not allow legal professionals from the affected region to work within the Court to avoid perceptions of political bias removed local ownership from the justice process. Overall, perceptions of the Court's success largely fell along ethnic lines: in a 2004 study, Bosniaks were most likely to see the ICTY as promoting social reconstruction and recognizing Bosniak victimization, while Bosnian Serbs and Croats believed it would be largely ineffective. Because of lack of widespread support, the ICTY was ineffective in creating an authoritative narrative about the wars, as "each national group reinterpreted the facts and aligned them with their own ethnic identity" (Hoogenboom and Vieille 2010, 191).

In addition to the ICTY, local transitional justice processes have been created by civil society actors. Between 1992 and 2001, approximately 8,000 NGOs working on humanitarian issues were registered, and approximately 30,000 projects related to housing, women's rights, intercultural communication, political education, and conflict management were initiated (Hoogenboom and Vieille 2010, 192). A 2006 study on interethnic relations in BiH found that organizations and programs that work to address practical concerns without a direct focus on inter-ethnic relations tended to have a stronger positive impact on inter-ethnic relations as a byproduct than those that focus solely on advocacy. Multiethnic workplaces in which employees focused on tasks while regularly interacting with colleagues of different cultural backgrounds created higher levels of tolerance, and organizations with mixed membership that focused on providing practical

skills and concrete benefits were more trusted than organizations that focused on advocacy. For example, a business network in central BiH that worked to increase business-owners' profits may not have directly focused on reconciliation, but it did cause individuals from various backgrounds to work together to achieve common goals. As one participant in the study noted "people participate to improve their businesses, not to find a spouse" (Pickering 2006, 82-97).

Meanwhile, in terms of institutional results, BiH's progress has stagnated. Below, it is evident that, according to International IDEA, after 1995 democracy has not significantly improved but has stayed moderately stable,[37] and Freedom House has ranked the country as a transitional/hybrid regime from 2005 through 2024.[38]

Figure 4: BiH Democracy Indices (courtesy of International IDEA Global State of Democracy Initiative)



Because of the ongoing governance issues associated with a weak central government and deep divisions along ethnic lines, the sustainability of BiH structured around Dayton is questionable. In the past decade, there have been increasing calls for secession by Bosnian Serb nationalists.

[37] International IDEA, Global State of Democracy Initiative, *Global State of Democracy Indices,* https://www.idea.int/democracytracker/gsod-indices.

[38] To access all *Nations in Transit data since 2005, visit:* *https://freedomhouse.org/report/nations-transit*.

Milorad Dodik, who became Prime Minister of RS in 1998 and is now the President, has repeatedly called for "a national self-determination" referendum within RS—a move which mirrors demands of Bosnian Serb leaders in 1991 prior to the outbreak of the war. He first began promoting the idea of secession in 2006, following Montenegro's referendum for independence from the Serbia-Montenegro union. In 2008, after Kosovo's independence referendum, he once again raised the issue. In January 2010, the RS Assembly passed a law on the holding of referenda, leading him to once again advocate for secession until, in March, he suggested opening the discussion on Bosnia's dissolution. In August, he stated

> "Bosnia is a burden for us […] We Serbs do not live in Bosnia, we live in the Serb Republic […] a multiethnic society can be implemented somewhere else, but in Bosnia it is impossible. Bosnia is a divided country in people's minds [and] … a big mistake of the West" (Toal and Maksić 2011, 283).

This rhetoric has benefited him and his Party of Independent Social Democrats (SNDS). In 2002, SNDS got 23.4 percent of the vote in RS for the RS National Assembly. In 2006, this rose to 46.9, and in 2010 it received 43.4 percent (Toal and Maksić 2011, 283-86).

In addition to divisive rhetoric, Dodik has led concrete efforts within the RS Assembly toward independence. For example, in 2018 a report revealed that Dodik was amassing a paramilitary group called 'Serbian Honour' that was funded by Russia and trained in Serbia (Borger 2018). In 2021, the OHR had to pass a law to criminalize denial of genocide and glorification of war criminals because of the continued promotion of revisionist narratives. Although this was due to years of buildup, the incident used to justify this law was RS's Assembly's refusal to withdraw medals awarded to three convicted war criminals. In reaction, Dodik once again threatened to work towards the "dissolution" of BiH (Associated Press 2021). In what was widely viewed as a targeted attack on journalists and activists, the RS Assembly—led by Dodik—passed a law criminalizing defamation in 2023 (Kurtic 2023), and in April 2024 the

RS Assembly passed an election law that would take over competencies typically regulated at the national level. The law was suspended by the Constitutional Court but still illustrates the increasingly bold pro-secession movement led by Dodik in RS (RFE/RL's Balkan Service 2024). Most recently, in March 2025, Dodik was convicted for defying the authority of the High Representative. In reaction, Dodik stated that the verdict was driven by "racial and national hatred" (Kurtic 2025b) and that "There is no more Bosnia-Herzegovina as of today" (Sito-Sučić 2025). Clearly, the continued threat to BiH's territorial integrity in the from the Serb secession movement presents the strongest challenge to transitional justice in the country. The one-foot-out-the-door behavior of Bosnian Serbs shows a clear lack of compliance with EU-supported transitional justice policies, a fact that is even more so evident in the recent ruling against Dodik, which clearly stated that he was in violation of EU transitional justice policies.

Accession to the European Union

During the war and in the immediate postwar period, the leading international power in BiH was the US. Despite the fact that the head of the European Community Presidency Jacques Poos argued that it was "the hour of Europe, not the hour of the United States" (Brljavac 2011, 408), relations between Europe and BiH were based mostly on humanitarian aid. As the EU developed a more comprehensive security and defense policy, however, it took on a bigger role in BiH. This largely began in 2004 when the EU replaced NATO's peacekeeping mission and deployed EU Police Mission to replace the UN's International Police Task Force. As the US switched its foreign policy focus to the Middle East following the events of 9/11, the EU became the leading international actor in Bosnia and the rest of the Western Balkans (Brljavac 2011, 408-9).

Since then, the EU has been the leading international power in BiH, operating through the OHR, which used the Bonn powers to implement the DPA. The Bonn powers were created in a conference of the Peace Implementation Council in Bonn, Germany, in 1997. They were based on Annex 10 of the DPA and empowered the OHR to remove officials who violated legal commitments and pass any laws deemed necessary to implement the peace agreement (Banović et al. 2021, 93-94). The Delegation of the European Council to BiH (now called The Delegation of the EU) was launched in 1996 and oversees implementation of EU policy. The head of the Delegation works under the authority of the EU's Special Representative, who is responsible for overseeing BiH's path toward integration (Banović et al. 2021, 93-97). Along with the rest of the Western Balkan countries, BiH was identified as a potential EU candidate in the early 2000s. However, its progress regarding accession has been much slower than most of the other countries. In a 2003 Feasibility Study, the EC noted the reforms necessary for BiH to enter into the Stabilization and Association Agreement (SAA), including in areas related to human rights protections and the judiciary. BiH signed the SAA in 2008, but it did not come into effect until 2015 (Dudley and Saez 2022, 78). This was because Bosnia failed to meet two important obligations: state assistance to the population census and implementation of a ruling by the European Court for Human Rights that stated that the constitution of BiH breached the rights of national minorities by preventing them from running for positions in the Presidency and the House of the Peoples (Radio.net 2011). In 2014, Croatia suggested that BiH receive a Special EU Candidate Country status despite not having fulfilled these two obligations, arguing the member states should take a more proactive approach to cooperating with BiH, and that these constitutional issues would be better addressed through chapters 23 and 24 of the accession process after the EU granted the Special Candidate status (Krasnec 2014). The country applied for EU membership in

2016, and in 2019 the EC set 14 key priorities related to functionality of democracy, rule of law, fundamental rights, and public administration reform. In 2022, BiH became a candidate country, and in 2024 the Council opened accession negotiations.[39]

Despite the many instruments and policies implemented in BiH by the EU there has been limited success in implementing impactful solutions to the ongoing "political and social crisis" (Brljavac 2011, 413). What began as a state-building project oriented around ideals of democracy and liberalism, has now taken the form of an "externally designed and applied" project led by the OHR "who set and imposed and the political agenda and punished those local actors who did not implement it" (Bargués and Morillas 2021, 1322). This democratization project became a form of external supervision by the EU, which took away the ability of the Bosnian people to self-govern. Only in 2012 did the EU begin to view resilience as key and began emphasizing the importance of local ownership over political reforms. However, several obstacles stand in the way of increasing local ownership, including local officials' uncommitted approach to implementing governance reforms, parties' unwillingness to cooperate, and the perception among local populations that multiethnic cooperation is "a foreign and artificial objective" (Bargués and Morillas 2021, 1324). Additionally, the lack of legitimacy of the government due to its inability to respond to the people's needs and the stagnation of BiH's path toward the EU ensures that these issues continue indefinitely (Bargués and Morillas 2021, 1323-24). This lack of resilience and dependency on international interventions explains the classification of BiH and non-compliant: the reforms completed that align with transitional justice goals were largely completed by the OHR, not the government itself.

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[39] European Commission*, Bosnia and Herzegovina Report 2024, Annex 1 – Relations between the EU and Bosnia and Herzegovina.*

Regardless of these issues, BiH has made significant progress in the accession process since becoming a candidate country in 2022. In March 2024, the EU agreed to open accession negotiations following a favorable report by the EC, even though the country did not meet the 14 key priorities created by the EC in 2019. In an interview with a regional news source, an Oslo-based researcher explained that although the EU strengthened conditionally measures in 2019, these measures were weakened again in the last two years: "The EU simply gave up on many things from its 14 priorities because it was too ambitious and unrealistic […]" (Popović 2024). Upon announcing the start of accession negotiations, President of the EC Ursula von der Leyen stated:

> "The country has taken impressive steps towards our Union. More progress has been achieved in just over a year than in over a decade. Bosnia and Herzegovina is now fully aligned with our Foreign and Security Policy. We have also seen sustainable progress on the adoption of important laws. We have seen progress on migration management, Bosnia and Herzegovina has made great strides on dialogue and reconciliation. So I hope that the decision of today will lead to even more progress" (European Western Balkans 2024a).

Meanwhile, in just the past year, several incidents have revealed the lack of interethnic reconciliation in BiH, and, importantly, government officials' roles in obstructing interethnic reconciliation. In reaction a UN resolution commemorating the Srebrenica genocide, thousands of Bosnian Serbs rallied in Banja Luka to protest the resolution. Dodik stated that Srebrenica was a "mistake" and a "huge crime" but that it "wasn't genocide" (Associated Press 2024). The Chief Warden of a wartime prison in which Bosniak prisoners were abused and used for forced labor by Croats, Stanko Bozic, has gone unprosecuted (Grebo 2024). More than 2,700 Bosnian Serbs gathered in Banja Luka to celebrated the "Day of Republika Srpska." They were endorsed by both the government of RS and Serbia despite it being banned by two orders from the Constitutional Court (Kurtic 2025a). Lastly, new education curriculum introduced in schools in RS will focus on

the political and military achievements of Bosnian Serb wartime leaders Ratko Mladić and Radovan Karadžić, without requiring teachers to add that both men were sentenced to life by the ICTY. While the textbooks include a lesson on “Republika Srpska and the Defensive War of Liberation” and information on crimes committed against Serbs, it does not include the fact that Serb actions in Srebrenica constituted a genocide (Mrso 2024). These incidents are a stark contrast to the EU’s statement regarding BiH’s progress.

Backtracking and Self-Victimization: Nationalism and anti-Westernism in Vučić’s Serbia, 2016-24

Noncompliance is further illustrated by Serbia in the past decade. Especially in most recent years, the government has increasingly pushed back against the EU’s required reforms in areas such as democratization, rule of law, anti-corruption, and transitional justice. This has pushback has been led by Aleksander Vučić. Although he first became Prime Minister in 2014, the real turning point and when the government of Serbia ceased complying with transitional justice efforts promoted by the EU came in 2016. This change is evident in the European Commission’s (EC) annual progress reports. The report for 2015 cites some progress regarding election transparency, judicial independence, freedom of expression and protections for journalists, minorities, and civil society activists, it also notes that Serbia “continued to cooperate fully with the ICTY” and that “cooperation between the special prosecutors of Serbia and Bosnia and Herzegovina continued on an upward course.” Serbia also made progress in implementing agreements with Kosovo, including dismantling Serbian institutions in Kosovo, integrating the Serbian police and civil

protection force, and customs agreements.[40] By contrast, the 2016 report noted no progress in relation to freedom of expression,[41] and *Freedom in the World* noted serious concerns regarding the fairness of the elections. Vučić's government increasingly attacked and criticized journalists, especially those reporting on issues related to the wars of the 1990s. After Vučić party did well in the Vojvodina province several journalists and editors were terminated from Radio-Television Vojvodina in a politically motivated purge, and NGO workers increasingly reported feeling threatened by the government.[42] These developments signify that, under Vučić, Serbia ceased complying with transitional justice at around the 2016 mark. Subsequent incidents in recent years illustrate this point as well.

The lack of compliance is evident in Vučić's Serbia's attempts to re-negotiate narratives of Serbia's role in the wars of the 1990s, often seen through the glorification of Serb wartime leaders and convicted war criminals. This is particularly salient in the case of Ratko Mladić who, during his trial, was shown on video directing his soldiers to execute civilians and bury them in mass graves. Despite this, graffiti around Belgrade shows support for him, and the government's unwillingness to take this graffiti down shows the government's endorsement of this (Visnjic 2024a). In 2021, for example, a mural of Mladić in downtown Belgrade drew protestors from Youth Initiative for Human Rights-Serbia (YIHR-Serbia)—who tried to paint over it—and nationalist counter protestors. Police arrested two YIHR activists who threw eggs at the mural on the basis of "protecting public peace." This mural came after Mladić's appeal at the ICTY was

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[40] European Commission, *Serbia: 2015 Report*, pages 19 and 22, https://enlargement.ec.europa.eu/serbia-report-2015-0_en.

[41] European Commission, *Serbia: 2016 Report,* pages 6-7, https://enlargement.ec.europa.eu/serbia-report-2016-0_en.

[42] Freedom House, *Freedom in the World, pages 448-49,* https://freedomhouse.org/sites/default/files/2020-02/Freedom_in_the_World_2017_complete_book.pdf.

denied. Interior Minister Aleksander Vulin prohibited both groups from touching the mural and called the activists' efforts "vile and led by evil intent." He stationed riot police around it, and hinted at violence should activists attempt to cover it up in any way. In the coming days, President Aleksander Vučić downplayed Vulin's involvement, and denied that the police were there to protect the mural, saying instead that their role was to protect public peace and safety. In the coming weeks, activists repeatedly threw paint at the wall, but overnight, Mladić's supporters fixed the mural (Bogdanović et al., 2021). More recently, Cuprija, a town in central Serbia, drew controversy when the town's Cultural Institute, which works to promote the local culture, announced a competition for another public mural of another convicted war criminal, Nebojsa Pavković. "We don't have the space to look at things like this as an individual incident anymore and we have nothing to be surprised about. It is a long-standing state policy of denying war crimes and glorifying those responsible for those crimes," Jovana Kolaric from the Humanitarian Law Centre in Belgrade said (Stojanović 2024).

Figure 5: Mural of Ratko Mladić in downtown Belgrade, courtesy of Civil Rights Defenders.

More recent examples of the Serbian government's promotion of nationalist anti-Western and self-victimizing rhetoric includes the reaction to the UN resolution commemorating the

Srebrenica genocide and Vučić's reaction to Dodik's conviction. The Resolution, adopted by the UN General Assembly in May 2024, did not mention Serbs or Serbia in the text. Regardless, Vučić claimed that it defined Serbs as a genocidal people and protested the vote by wrapping himself in a Serbian flag when he attended the vote at the UN Headquarters in New York. Pro-government newspapers in Serbia praised Vučić for this, calling him "one of the greatest Serbs of all the time, who had the strength and the courage to confront the greatest powers of the West." Vučić and his SNS party went on to use this rhetoric in the June local elections in Belgrade and Novi Sad (Stojanović 2024b). Similarly, Vučić showed strong support for Dodik following the February 2025 conviction by flying to Banja Luka and stating that this was "the biggest crisis in Bosnia and Herzegovina since the end of the war", calling the verdict "shameful" and said that it was "unlawful, anti-democratic, [and] aimed at undermining Republika Srpska and weakening the position of the Serbian people (Kurtic 2025b)" These examples show Vučić's usage of anti-Westernism and self-victimization to maintain power, and illustrate his increasingly bold opposition to transitional justice and lack of compliance.

Non-Compliance in Relation to Serbia-Kosovo Dialogue

One of the main projects the EU has worked on with Serbia and a core component of the accession criteria is dialogue between Serbia and Kosovo with the aim of normalizing relations. Serbia has pursued a dual strategy when it comes to Kosovo: on the one hand, it has continued to unequivocally refuse to recognize Kosovo's independence. In recent years, this rhetoric has intensified, and tensions over this issue have mounted. An example of this is the banning of the Miredita Dobar Dan festival that celebrates cultural exchange between Kosovo and Serbia, which was supposed to be held in Belgrade in June 2024. On the day of the festival the Serbian authorities

banned the festival citing safety concerns, and a busload of organizers and journalists from Priština were refused entry to Belgrade and then subsequently deported back to Priština (Bami and Baletic 2024). This incident is illustrative because in the past, officials from both countries have been largely indifferent to it: Serbia's now-President Vučić even signed the opening letter when he was Prime Minister. In recent years, however, local governments in both Belgrade and Pristina as well as nationalistic citizens have been increasingly hostile toward the festival's organizers.[43] Furthermore, commonly found graffiti around Belgrade claims Kosovo as a part of Serbia through a popular slogan, the translation of which reads "When the army will go [back] to Kosovo", referencing the desire to reclaim Kosovo through military means. In the middle, there is also a symbol with the flags of the EU and NATO crossed out, signaling opposition to both organizations. This behavior signals a shift from past actions by the government of Serbia, which, in early 2010s signaled a willingness to negotiate on some issues, although never signaling that it would change its position on full recognition for Kosovo (Gashi and Novaković 2020, 2-4). A more elaborate discussion of this era is included in the following chapter on reluctant compliance.

[43] Interview with project manager for Serbian NGO, August 15, 2024. Mount Holyoke College.

Figure 6: Graffiti in downtown Belgrade claiming Kosovo as a part of Serbia

The European Union's Response to non-Compliance and the Vučić Government, 2016—Present

While on paper, transitional justice concepts (justice, reconciliation, truth, etc.) are stated goals of the EU's accession process in Serbia, the lack of compliance on the part of Serbia regarding requirements related to democracy, justice, and rule of law calls into question the EU's effectiveness and/or commitment to transitional justice. In its revised methodology, the EU placed Chapters 23 and 24—which deal with judiciary and fundamental rights and justice, freedom, and security respectively— in Cluster One, titled "the Fundamentals." Both chapters were opened in July 2016, but little progress has been made toward fulfilling the requirements outlined in them. The legislative reforms and constitutional amendments required in the judicial sector were not met by the deadline at the end of 2017 or the revised deadline at the end of 2021. High levels of corruption affect the functioning of the judicial sector, but the government has not moved to

sufficiently reduce corruption either. In July 2021, the European Parliament adopted a resolution condemning the Serbian government's consistent undermining of rule of law and EU values. The failures of the conditionality policies put forth by the EU have led some scholars to link the concept of "stabilitocracy"—defined in this case as "governments that claim to secure stability, pretend to espouse EU integration and rely on informal, clientelist structures, control of the media, and the regular production of crises to undermine democracy and the rule of law" (Bieber 2018)—to the EU's practices due to the EU's political endorsement of Serbian leadership regardless of the leadership's willingness to meet accession criteria or behave democratically. As CSOs and NGOs repeatedly attempt to warn the EU of intensifying democratic backsliding, increasing nationalism, and glorification of war crimes, the EU has rarely enacted consequences for anti-democratic leaders (Burazer et al., 2022).

A recent example of this is the European Parliament's condemnation of the December 2023 snap elections, during which observers noted several concerning practices such as vote buying, group voting, media bias, and an "improper influence" of President Vučić.[44] Despite the fact that the EU called for an independent international investigation to establish if the election was rigged, no investigation has taken place thus far and it remains doubtful whether the Serbian government will implement the recommendations put forth by OSCE and ODIHR to improve electoral conditions (Stojanović 2024a). Nearly a year after these elections, in October 2024, Serbia became eligible to participate in the new WB Growth Plan after its Reform Agenda was approved by the EC (European Western Balkans 2024b). The Growth Plan includes a total of six billion euros available to the WB6 that aims to "enhance economic integration with the EU's single market,

[44] European Parliament, *European Parliament resolution of 8 February 2024 on the situation in Serbia following the elections*, https://www.europarl.europa.eu/doceo/document/TA-9-2024-0075_EN.html.

boost economic integration within the Western Balkans through the Common Regional Market, accelerate fundamental reforms, and increase financial assistance."[45] The lack of accountability for anti-democratic behaviors and lack of compliance with EU-promoted transitional justice ideals by Serbian leaders and the inclusion of these leaders in projects such as the Growth Plan illustrates a pattern in the EU's approach to Serbia, in which it couples reproachful statements with few concrete consequences. This provides the Serbian government with external legitimacy from the EU (an organization claiming to place democracy and human rights at the center of its mission) despite its autocratic tendencies. This is evidenced in Serbia's declining democracy scores according to Freedom House, which according to Freedom House's methodology, moved the country down from a semi-consolidated democracy to a transitional or hybrid regime in 2019.

Conclusion

Both cases illustrate the category of non-compliance because the governments—through official and unofficial actions—failed to implement transitional justice policies that are supported by the EU. In BiH, the government structure created by the DPA and strong mandate of the OHR resulted in a weak political system that was both unable and unwilling to implement transitional justice. Additionally, the continued efforts on the part of Dodik and the RS Assembly to erode the territorial integrity of BiH by promoting secessionist rhetoric and taking tangible steps toward this goal shows a complete lack of compliance regarding EU-supported transitional justice, which aims to maintain BiH as one state. The fact that the EU opposes Dodik's stance on secession is clearly evidenced by the recent ruling against him, which states that he violated the decisions of the OHR.

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[45] European Commission, *Factsheet: New Growth Plan for the Western Balkans*. European Commission, https://neighbourhood-enlargement.ec.europa.eu/factsheet-new-growth-plan-western-balkans_en.

In Serbia, since 2016, the Vučić government has clearly not complied with EU-led transitional justice efforts. This is seen in Vučić vehement opposition to the UN resolution to commemorate the Srebrenica genocide (which was proposed by Germany and supported by a majority of European countries), his support for Dodik, and the government's indifference to glorification of war criminals and domestic support for using military means to reclaim Kosovo.[46] Despite this clear lack of compliance, BiH has progressed through the accession process in recent years, and Serbia has not faced any severe consequences for its increasingly antagonistic approach to fulfilling these requirements. This highlights an important blind spot in the EU's approach to transitional justice: not only is it clear that these conditionality policies have not succeeded in producing significant progress in the past 25 years, but they have also been unsuccessful in preventing backsliding in more recent years.

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[46] UN Assembly Adopts Resolution Establishing Srebrenica Genocide Day. *Milica Stojanović – Balkan Insight*. 23 May, 2025. https://balkaninsight.com/2024/05/23/un-assembly-adopts-resolution-establishing-srebrenica-genocide-day/.

Chapter 4

Reluctant Compliance in Kosovo and Post-Milošević Serbia, 2000-15

"The only way to reach peace is to deal with difficult topics—topics of the past. I mean, reconciliation, nobody said that it's an easy process. You have to [...] process a lot of difficult things that have happened. So of course, it's easier to just take the route of ignorance."

—Program Coordinator, Youth Initiative for Human Rights, Serbia. [47]

Kosovo and post-Milošević Serbia (2000-15) represent reluctant compliance through both cases' incomplete implementation of transitional justice, and the continued efforts to undermine these efforts. However, in both cases, it must be acknowledged that both did implement some transitional justice. Reluctant compliance is defined as: *the government reluctantly implement some EU-backed transitional justice policies/mechanisms in some sectors while actively undermining transitional justice in other sectors.* Kosovo and Post-Milošević Serbia (2000-15) illustrate this compliance type well because in both cases government officials complied with EU-backed transitional justice policies to some degree, but in many ways their implementation was incomplete, and political officials repeatedly undermined these efforts through unofficial and official means. In Kosovo, reluctant compliance is shown through the refusal to implement

[47] *Interview with Program Coordinator at Youth Initiative for Human Rights, Serbia.* Mount Holyoke College. August 15, 2024.

agreements to establish the Associations/Communities of Serb-majority Municipalities, and the protests generated by this agreement and the agreement to create the Specialist Chambers to prosecute former KLA leaders implicated in war crimes and organ trafficking allegations. In Serbia, reluctant compliance is shown in the on-and-off nature of compliance with the ICTY, and elections of nationalist leaders tied to Milošević. In both countries, the government's reluctance to comply with EU-backed transitional justice is further expressed through their hostile relationships with journalists and civil society activists working in this sphere. This ongoing reluctant behavior has not been improved by the EU's conditionality policies however, and as is shown in the previous chapter, these policies were also unsuccessful in preventing Serbia's backsliding from reluctant compliance to non-compliance.

State-building and Sovereignty: Transitional Justice in Kosovo, 2008-24

Out of all the Western Balkan countries, the transitional justice process in Kosovo has been the most politicized. One factor for this is the lack of formal peace agreement at the end of the war in 1999: with neither Serbs nor Kosovar Albanians agreeing to a resolution and instead submitting to NATO's imposed peacekeeping methods, reaching an agreed-upon narrative of the conflict has so far been impossible. The peace process, transitional justice, and overall state-building have been largely led by international efforts, such as the United Nations Interim Administration Mission in Kosovo (UNMIK). Serbs and Albanians have both attempted to instrumentalize these efforts for their own gain. In both Serbia and Kosovo, competing narratives of the war are promoted by interest groups, and victims are marginalized and used as props for nationalist narratives (Visoka 2016, 2). This has led to a state of reluctant compliance, in which Kosovo officials acquiesce to

EU demands because of their dependency on the EU, while simultaneously promoting nationalist rhetoric that undermines reconciliation and negatively impacts interethnic relations.

An illustrative example of the divisive nature of transitional justice in Kosovo is the airing of the Milošević trial at the International Criminal Tribunal for the former Yugoslavia (ICTY). The trial of Milošević in 2002 largely failed to gain support of Kosovar Albanians due to the fact that the legal process marginalized victims and gave Milošević a prime-time platform with which to defend and justify his actions in Kosovo. This critique of legalistic or retributive justice—that it is not victim-centered and that it can give perpetrators a platform—is particularly salient in the case of Kosovo, where the past conflict remains an open issue (Kostovićova 2014, 2–4). Despite the fact that the trial was meant to be an opportunity of reproachment between Serbs and Albanians by creating an official narrative around which both populations could coalesce, "the trial contributed to the perpetuation of a state of denial in Serbia about responsibility for atrocities, expulsion, forced displacement, rapes, looting, and dispossessions in the wars of the 1990s" (European Western Balkans 2024b). In the trial, Milošević represented himself, and therefore interrogated witnesses (many of whom were Albanian). He called the experiences of witnesses "fake" and "false", drew connections from witnesses to the Kosovo Liberation Army (KLA), and refused to accept that the Serbian military—which he referred to as the Yugoslav military to highlight its multiethnic nature—committed needless violence (Waters 2014, 213-18). Overall, the Milošević trial created further divisions between the Albanian and Serb populations in Kosovo, as Serbs identified with the self-victimization narrative put forth by Milošević, and Albanians were outraged at his attitude throughout the trial. Several polls show that Kosovar Albanians hold more positive views of the ICTY, however, than Kosovo Serbs, who overwhelming question the ICTY's legitimacy and believe it is biased (Waters 2014, 219).

While there are plenty of CSOs and NGOs working toward the ideals of transitional justice in Kosovo, they are marginalized by the nationalist government that often uplifts the voices of those who led or fought in the war.[48] The government's approach to the transitional justice is shaped by requirements laid out by the EU; because the government is so reliant on the aid and support the EU provides, they tend to reluctantly comply with the EU's requirements, all the while undermining transitional justice in other sectors.

The European Union, Normalization of Relations, and Transitional Justice

Throughout Kosovo's development, the EU, which has been active in the region since the end of the war in 1999, has been a major player that has affected the implementation of transitional justice in Kosovo and facilitated talks with Serbia. In 2003, the EU "acknowledged the European perspective" for Western Balkan states at the Thessaloniki Summit. Since then, it has provided significant levels of economic and political support to Kosovo, although the accession process remains stalled due to Kosovo's lack of recognition by Serbia. For now, Kosovo is designated as a "potential candidate". When it declared unilateral independence in 2008, the European Council acknowledged it and recognized it as a *sui generis* (unique) case. In 2016, a Stabilization and Association Agreement came into effect between Kosovo and the EU. The EU is also Kosovo's largest financial and political aid provider through the Instrument for Pre-Accession Assistance (IPA), giving 602.1 million euros between 2014 and 2020 alone.[49]

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[48] Interview with Program Director of a Belgrade-based think tank. Mount Holyoke College, October 2024.

[49] European Union, *The EU and Kosovo,* https://neighbourhood-enlargement.ec.europa.eu/enlargement-policy/kosovo_en. Kosovo – financial assistance under IPA. https://neighbourhood-enlargement.ec.europa.eu/enlargement-policy/overview-instrument-pre-accession-assistance/kosovo-financial-assistance-under-ipa_en.

One major example of the EU's involvement in transitional justice in Kosovo is the establishment of the Kosovo Specialist Chambers, which came out of a report presented in the Council of Europe Parliamentary Assembly in 2011. The report highlighted war crimes and human rights abuses perpetrated by the KLA against both Serbs and Albanians. The report, created by the Committee on Legal Affairs and Human Rights led by Rapporteur Dick Marty of Switzerland, confirmed that both Serbs and Albanians were detained by the KLA in secret locations in northern Kosovo. The prisoners were "subjected to inhuman and degrading treatment, before ultimately disappearing."[50] Both prior to and immediately after the end of the armed conflict, there was evidence of organ trafficking. International authorities present at the time "did not consider it necessary to conduct a detailed examination of these circumstances or did so incompletely and superficially." Because in the immediate postwar period international organizations (the UN, NATO, and the EU) prioritized short-term stability, victims of these crimes did not receive sufficient justice. The report argued that the actions of the KLA were not investigated sufficiently and states that the members of the EU should provide "the necessary political support to combat organized crime uncompromisingly, to ensure that justice done, without any considerations of political expediency; Albania and the Kosovo administration should co-operate unreservedly with ongoing and future investigations."[51]

In response to this report, the EU established the Special Investigative Task Force (SITF) which conducted an independent criminal investigation, and in 2014 SITF stated that there was enough evidence to issue indictments. In 2015, the Kosovo Assembly adopted Article 162 of the

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[50] Parliamentary Assembly, Committee on Legal Affairs and Human Rights, 7 Jan. 2011*Inhuman treatment of people and illicit trafficking in human organs in Kosovo*:* https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=12608&lang=en.

[51] Ibid.

Kosovo Constitution and the Law on Specialist Chambers and Specialist Prosecutor's Office. This meant that the Specialist Chambers are now attached to every level of the court system in Kosovo and operate based on relevant Kosovo laws, customary international law, and international human rights law. They are staffed by international judges, and prosecutors and officers are based out of the Hague. The Specialist Chambers are funded by the EU and several other countries, including Canada, the US, Switzerland, Turkey, and Norway.[52]

While the official reason that the EU pushed Kosovo to create the Specialist Chambers was the report that outlined serious human rights abuses by the KLA, a less-acknowledged reason for their creation is the effort to even out the number of individuals indicted for war crimes against Kosovar Albanians versus those indicted for crimes against Kosovo Serbs. Serbia—and eventually Kosovo when it declared independence in 2008—was expected to extradite all those accused of war crimes in Kosovo to the Hague, and even former-President of Serbia Milošević was put on trial for crimes in Kosovo (he died before the court delivered a verdict). However, while several Serbian leaders were put on trial and convicted of war crimes committed in Kosovo, KLA leaders, although they were indicted, were largely acquitted due to lack of evidence. This further reinforced the pattern that although many Serbian leaders were found guilty of war crimes perpetrated against other ethnic groups, few individuals were found guilty of crimes committed against Serbs. By pushing Kosovo to create the Specialist Chambers, the EU acknowledged this discrepancy. This led to the indictments and convictions of several high-profile KLA leaders, such as independent Kosovo's first Prime Minister Hashim Thaci, who was implicated in the Marty report and perpetrated crimes against Serbs in. The Specialist Chambers have continued to prosecute high

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[52] Kosovo Specialist Chambers & Specialist Prosecutor's Office, *Background,* https://www.scp-ks.org/en/background.

profile individuals associated with the KLA. Recently, for example, three former KLA fighters pled guilty (on the condition of a plea deal) on charges of witness intimidation and obstruction of justice in December 2024 (Bami 2024b), and Thaci appeared in court on December 8, 2024, on charges of witness tampering and obstruction of justice in relation to his ongoing case for war crimes and crimes against humanity (Bami 2024a). Whether or not this has successfully shifted public perception, or promoted reconciliation, however, is unclear.[53]

In addition to creating the Specialist Chambers, the EU has funded government initiatives such as the Regional Youth Cooperation Office (RYCO) and the Regional Cooperation Council (RCC). RYCO represents each of the WB6 countries and funds projects that promote reconciliation among youth by facilitating cultural exchanges, while RCC works toward goals such as regional cooperation and security through increasing civic participation in policy-making processes. In an interview, however, a representative from RCC articulated that "The RCC does not intervene [nor is it] directly connected to transitional justice projects. This is a work of national and international courts." Instead, the parts of the RCC's mission that center on good governance and rule of law do so from an accession process perspective. The representative from RCC continued, saying "while these activities indirectly promote trust and mutual understanding, they do not address the specific historical and societal dimensions of transitional justice. Instead, RCC focuses on fostering an environment of accountability, competence, and efficiency within judiciaries, contributing to the overall stability and development of Southeast Europe."[54]

Domestic Reception and Effects of EU-led Transitional Justice in Kosovo

[53] Interview with Program Director at Belgrade-based think tank, Mount Holyoke College, October 2024.

[54] Interview with a representative of RCC. Mount Holyoke College. November 12, 2024.

The United Nations Development Programme Kosovo* publishes a biannual pulse report surveying how residents of Kosovo view several issues, including politics and institutions, the economic situation, interethnic relations, and public and personal safety and security. Beginning with Pulse Report XXIV published in April 2023, the report also began covering transitional justice in Kosovo. Based on the responses covered in recent reports (2023-24) on whether "Kosovo's legacies of the conflict and collective past are or are not professionally covered by the media," it becomes evident that both Kosovo Albanians and Kosovo Serbs feel that the media does not professionally cover the past conflict. When asked whether a normalization agreement between Belgrade and Pristina would improve their lives and strengthen peace in Kosovo, 58.4 percent of Kosovo Albanians and 70 percent of all other ethnic groups responded in the affirmative, while only 24.8 percent of Kosovo Serbs agreed. The lack of clear positive impact of transitional justice in Kosovo—a project spearheaded and funded by the EU—is also accurately reflected in the reports' sections on interethnic relations, which go back to 2011. An analysis and comparison of these reports reveals that over the years interethnic relations have stayed tense. Willingness to work with individuals of the other ethnic group remains within the 35-45 percent range, while willingness to marry someone of the other ethnic group almost never leaves the single digits.[55]

In addition to ambivalent polling results among the population of Kosovo, the level of reluctance when it comes to implementing EU-promoted transitional justice is evidenced by the ways that political leaders and parties have protested developments such as the creation of the Specialist Chambers. Despite the 2011 Marty report implicating Hashim Thaci in war crimes and

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[55] To access all public pulse publications and view methodology, visit: https://www.undp.org/kosovo/projects/public-pulse.

organ trafficking, the Parliament reelected him to the position of Prime Minister in 2011.[56] In 2015, when EU-led talks between Serbia and Kosovo led to the establishment of Associations/Communities of Serb-majority Municipalities (A/CSM) which would give a higher degree of autonomy to Serbs in the north, the nationalist pro-sovereignty opposition party named Self-Determination (Vetëvendosje) led forceful and sometimes-violent protests and released tear gas into the legislative chamber.[57] The protests continued in 2016 and six members of Vetëvendosje were arrested after a rocket-propelled grenade was fired at the parliament building following Thaci's election as President by the Parliament. In 2019, elections following the resignation of Prime Minister Haradinaj due to summons from the Hague on war crimes charges led to Vetëvendosje's rise in the form of a coalition government with the Democratic League of Kosovo (LDK),[58] and in 2021 Vetëvendosje won nearly 50 percent of the vote in the snap elections in February, and so was able to form a government by itself and elect Albin Kurti as Prime Minister.[59]

The 2022 EC Country Report for Kosovo noted that the government failed to implement previously reached agreements, such as the establishment of A/CSMs.[60] In 2023, these concerns were raised again in the report, and the EC also noted increased Kosovo police presence in Serb-majority areas in the north. This led to a mass resignation of Serbs from Kosovo institutions,

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[56] Freedom House, *Freedom in the World 2012– Kosovo,* https://freedomhouse.org/sites/default/files/2021-11/FIW_2012_Complete_Book.pdf.

[57] Freedom House, *Freedom in the Word 2016 – Kosovo,* https://freedomhouse.org/sites/default/files/2020-02/Freedom_in_the_World_2016_complete_book.pdf.

[58] Freedom House, *Freedom in the World 2020 – Kosovo,* https://freedomhouse.org/sites/default/files/2021-08/FIW2020_book_JUMBO_PDF.pdf.

[59] Freedom House, *Freedom in the World 2022 – Kosovo,* https://freedomhouse.org/sites/default/files/2024-11/FIW-2022-Complete-Book.pdf.

[60] European Commission, *Country Report 2022 – Kosovo*, https://enlargement.ec.europa.eu/kosovo-report-2022_en.

protests, and a boycott of the election in April by Serbs.[61] This shows that, although the Kosovo government did agree to implement EU-backed transitional justice policies (such as the creation of A/CSMs and the Specialist Chambers) there was significant opposition to this, implementation has yet to be fully realized, and the opposition was able to gain power in recent years, signaling only reluctant compliance.

Mixed Results and Competing Narratives in Post-Milošević Serbia, 2000-15

Discussions of transitional justice in Serbia are highly politicized, and even the term "transitional justice" is controversial. Serbia's hesitancy to implement transitional justice is reflected in the high levels of nationalism, and the elections of leaders who increasingly oppose Western attempts to recognize Serbia's role in the wars of the 1990s. Of the 161 cases the ICTY tried, 92 were Serbs both from Serbia proper and RS in BiH. Below, I first describe Serbia's internal political environment in relation to transitional justice, before highlighting the EU's role in promoting transitional justice in the post-Milošević years from 2000-15. Through this, I show the ways in which the government's lack of condemnation for the glorification of war criminals and the prevalence of misinformation within Serbia has led civil society—with the exception of NGOs and activists often funded by external actors—to disengage with the issue of transitional justice, and instead to accept nationalist narratives about Serbia's past. Despite the EU's claim to support transitional justice and its usage of conditionality measures, the EU was not been unsuccessful in enacting effective consequences for current nationalist Serbian leaders' actions since the end of the wars, leading the increasingly autocratic Serbian government to continue to benefit from EU

[61] European Commission, *Country Report 2023 – Kosovo,* https://enlargement.ec.europa.eu/kosovo-report-2023_en.

candidacy despite not actively progressing through the accession process or implementing the required reforms.

Remembering the 1990s in Serbia

After the end of the wars, Milošević was ousted from power in 2000 due to a combination of widespread civil protests and a united opposition under President Kostunica's Democratic Party of Serbia (DSS) and Prime Minister Đinđić's Democratic Party (DS). The international community immediately began to pressure the new government to comply with the ICTY, especially to turn Milošević over to the Hague. At the time, however, this was a very domestically unpopular demand: only 11 percent of Serbian citizens supported this move (Grodsky 2009, 696). In an attempt to make some concessions to international powers to get sanctions lifted, the new government—led by Kostunica—created a truth commission that began operations in 2002. Although Kostunica actively sought Western support for the commission, Western actors recognized it as an attempt to shirk responsibilities related to the ICTY, and the ICTY's chief prosecutor stated that "local justice must not encroach on the prerogatives of the law" (Grodsky 2009, 696).

From the start, leaders from the justice sector disagreed on the truth commission's form and powers, leading it to have a weak mandate with a largely consultative nature. The 19 members were handpicked by Kostunica and were nearly all ethnic Serbs. The aim of the commission was very clearly to avoid complying with the ICTY and to produce a narrative that reduced Serb guilt, as opposed to the narrative that was being created by the ICTY. Additionally, although it was well-known among the international community, it had a low profile within Serbia, leading to more accusations describing it as appeasement for Western powers rather than a genuine attempt to

engage in dialogue about Serbia's role in the dissolution of Yugoslavia (Grodsky 2009, 697). Funding for the project only ever reached approximately $20,000—15 percent of the sum requested—and the commission members went unpaid and worked in their spare time. The mandate expired prematurely in 2003 with the bureaucratic reorganization of all federal bodies: no findings were ever published and within two years the commission's website had been turned into a Russian pornography site. By the time the commission shut down, Prime Minister Đinđić had begun had reluctantly begun handing officials over the Hague, creating a rift between him and Kostunica and, since the commission was created to avoid compliance with the ICTY, negated a core reason for the commission's existence (Grodsky 2009, 695-97).

Overall, as Serbian leadership has shifted and new leaders have risen to power, the government's approach to transitional justice has also evolved. At times, it has been more willing to take responsibility for its role—such as with when President Tadić apologized for crimes committed by Serbs against Bosniaks during his 2004 trip to BiH (Mehler 2012, 145-46)—while at others, complying with international demands for transitional justice or appearing to acknowledge Serbian guilt led to harsh consequences—as seen with the assassination of Prime Minister Đinđić after he turned Milošević over the to the Hague (Zarkov and Glasius 2014, 117).

Another lens through which to view Serbia's approach to remembering the 1990s is through analysis of history education. As of 2009, enrollment in secondary school was approximately 84.4 percent. The breakup of Yugoslavia is covered first in eighth grade, and then again in high school, meaning that all students are taught about the 1990s at least once, with most of them receiving a more in-depth education in high school. Analysis of Serbian history textbooks shows that, beginning in 1993, the curriculum began normalizing violence and emphasizing Serb victimization narratives (Jovanović 2020, 206-7). In 2000, when the opposition came to power, textbooks took

on a softer approach with a wider diversity of perspectives. In 2005, however, they returned to a stronger stance defending Serb actions, claiming Kosovo as being a part of Serbia, and uplifting narratives of Serb victimization. Additionally, by portraying rising nationalism as synonymous with violence, the textbooks leave out the decision-making part of the process: for example, in materials describing the events in Croatia in the early 1990s, the textbooks create a narrative in which violence was the only tool available to Croatian Serbs in their defense against Croat nationalism, which absolves Serb leaders of responsibility (Jovanović 2020, 198).

Successive regimes' policies have existed over time on "a continuum that ranges from outright affirmation of denial in the straightforward form of the celebration of crimes, to engagement with questions of responsibility through contestation" (Fridman 2022, 46). In the early 2000s, discussing Serbia's role in the wars was political disadvantageous, and therefore was not facilitated by DS or DSS following the end of the Milošević regime. In the early 2010s, with the return of the Social Party of Serbia (SPS) previously led by Milošević, SPS was repositioned as a legitimate actor. As the government increasingly works to commemorate the bits and pieces of the 1990s that frame Serbia's actions as either heroic or victimized, "'a mythologized national past is being emphasized, […] while at the same time, 'the history of the wars of the 1990s is being blurred' through 'amnesia and historical revisionism'" (Fridman 2022, 48).

A prime example of this is the Radio-Television Serbia (RTS) building, which was bombed by NATO on April 23, 1999, and the remains of which are preserved as a memorial for the victims of the NATO bombing campaign. Sixteen workers were killed on that night, and two more were seriously injured, which the Serbian government claims as civilian deaths. However, NATO justified the attack by claiming that RTS was a military target because it functioned as Milošević's propaganda machine. Furthermore, two weeks prior to the bombing of RTS, a NATO

spokesperson had stated that RTS was a legitimate potential target due to its role in disseminating state propaganda. That same night, an RTS anchor responded "Let [NATO commander Wesley] Clark open fire, we're waiting for him [and] We inform him that we are at 10 Takovska [Street]" (Stojanovic 2021). RTS director Dragoslav Milanović even had a contingency plan due to the fact that RTS has been labeled a target by NATO, however, he refused to answer the victims' families when they asked if he had known ahead of time whether the building would be bombed (Stojanović 2021). The memorial plaque outside the building in a nearby park does not mention the role of Milanović—who was convicted in 2002 for "a serious crime against public safety" (Stojanović 2021)—leading the Serbian public to further villainize NATO for the bombing campaign, without the full knowledge of local authorities' roles in maximizing the damage of the bombing campaign.[62] Similarly, although the Serbian government estimates that civilian deaths as a result of NATO's air campaign totaled somewhere between 1,200 and 5,000, an authoritative Human Rights Watch report was only able to verify approximately 500 civilian deaths (Human Rights Watch 2000, 3).

The EU-facilitated talks between Serbia and Kosovo also illustrate reluctant compliance in postwar Serbia. Although Serbia has remained steadfast in its claim that Kosovo's independence is illegitimate and has refused to recognize its independence, there was some progress made by both parties in the early 2010s on some key. These post-independence talks formally began in 2011 and culminated in the Brussels Agreement in 2013, and since then the two parties have been brought to the negotiating table by the EU numerous times to negotiate topics such as recognizing Kosovo-issued identity cards and license plates, boundary agreements, customs stamps for the

[62] Atlas Obscura, *"The Why? Memorial,"* January 17, 2025. http://www.atlasobscura.com/places/the-why-memorial-belgrade.

movement of goods across the border, university diplomas, regional cooperation and representation, Serb associations in Kosovo, Kosovo elections in the north, not blocking each other's path to the EU, telecommunications, and chambers of commerce (Gashi and Novaković 2020, 2-4). While the two countries have continued negotiations on these topics since then, it must be noted that Serbia never officially ratified the Brussels Agreement because the National Assembly does not view it as an international document (Ejdus 2020, 140). Serbia's refusal to ratify the Brussels Agreement indicates a form of reluctant compliance, in which the government has complied with some agreements but has done so incompletely.

The European Union and Transitional Justice

Serbia's path toward the EU has been shaped primarily by its approach toward transitional justice (or lack thereof). Negotiations for the SAA began in January 2005 but were called off in March 2006 because of Serbia's lack of cooperation with the ICTY. They began again in June 2007 when Serbia committed to cooperating with the ICTY.[63] Article Two of the SAA – which entered into force in 2013 – reads that

> "respect for democratic principles and human rights as proclaimed in the Universal Declaration of Human Rights […], respect for principles of international law, including full cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY), and the rule of law as well as the principles of market economy as reflected in the Document of the CSCE Bonn Conference on Economic Cooperation, shall form the basis of the domestic and external policies of the Parties and constitute essential elements of this Agreement."[64]

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[63] European Commission, *Key* Milestones. EU-Serbia Relations, https://enlargement.ec.europa.eu/enlargement-policy/serbia_en#key-milestones.

[64] European Commission, *Stabilisation and Association Agreement between the European Communities and their member states on one part, and the Republic of Serbia, of the other part*. European Commission. 2013.

Furthermore, Article Four states that "The contracting parties reaffirm the importance they attach to the implementation of international obligations, notably the full cooperation with ICTY."[65] Throughout the engagement of Serbia with the EU, the EU has reinforced this in various ways, including through the annual reports the European Commission published on Serbia's progress regarding accession.

Despite this, Serbia's reluctance to comply with EU standards when it comes to transitional justice is evident over the years. For example, in 2006 negotiations for the SAA were called off by the EU due to Serbia's failure to apprehend and extradite Ratko Mladić and Serbian citizens' approval of a new constitution with a provision refusing Kosovo's proposed independence through a referendum.[66] In 2012, former ultra-nationalist Tomislav Nikolić won the Presidency and propelled the Serbian Progressive Party (SNS, now led by Aleksander Vučić) to leadership. SNS formed a coalition with the Socialist Party of Serbia (SPS) led by former-Milošević spokesman Prime Minister Ivica Dačić.[67] Analysis of Human Rights Watch's *The World* reports 2000-2015 shows that accountability for war crimes remained elusive, compliance with the ICTY was shaky at best, and journalists and civil society actors faced threats and were physically harassed by government officials and groups connected to the government regularly. Clearly, although the government did implement some EU-backed transitional justice policies at times, prominent leaders also worked to undermine transitional justice regularly.

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[65] *Ibid.*
[66] Freedom House, *Freedom in the World 2007 – Serbia,* https://freedomhouse.org/sites/default/files/2020-02/Freedom_in_the_World_2007_complete_book.pdf.
[67] Freedom House, *Freedom in the World 2013 – Serbia,* https://freedomhouse.org/sites/default/files/2020-02/Freedom_in_the_World_2013_complete_book.pdf.

Conclusion

The above analysis of Kosovo 2008-2024 and Post-Milošević Serbia 2000-2024 shows that, in both cases the governments of the respective countries complied with EU-promoted transitional justice-oriented policies but did so reluctantly and actively worked to undermine these projects in some way, either officially or unofficially. In Kosovo, this is shown through the reelection of Thaci by the Parliament as Prime Minister despite the Marty report implicating him in war crimes and organ trafficking, the lack of implementation of the A/CSMs, and the controversy and protests that this agreement caused which resulted in the rise of Vetëvendosje, a nationalist pro-sovereignty party. In Serbia, reluctance in the first 15 years after the end of the wars and Milošević's rule is shown through the inconsistent compliance with the ICTY, the government's promotion of a narrative of the wars that absolves Serb leaders of responsibility, and the elections of leaders connected to Milošević and Serbia's wartime government. In both cases, the lack of resolution for the issue of Kosovo's independence, as well as the governments' consistently threatening behavior toward journalists and civil society actors further illustrates their reluctancy to confront their respective pasts and implement transitional justice. This reluctant behavior is despite years of EU pressure in the form of conditionality policies, showing that the EU's strategy has not been successful in pushing countries toward full compliance.

Chapter 5

Selective Compliance in Đukanović's Montenegro, 2006-23 and Post-Accession Croatia, 2013-25

> *Montenegro was there in the union with Serbia, and we didn't do anything about that. The government that did this hadn't changed—it was the same government that participated in war crimes in Bosnia Herzegovina.*
>
> —Political Scientist in working for Human Rights Action in Montenegro.[68]

Selective compliance is exemplified by post-independent Montenegro under Milo Đukanović until his 2023, and by post-accession Croatia after 2013. In the decade leading up to Montenegro's independence Đukanović sought to gain the EU's support to counterbalance Serbia's influence. To do this, he complied with the EU's transitional justice program in areas deemed necessary to maintain good relations with the EU. Similarly, in post-accession Croatia, political leaders have continued to promote transitional justice areas that align with the state's narrative, such as by honoring Croatian victims of the wars. This partial compliance with transitional justice reforms is illustrative of selective compliance, which is defined as: *the government implemented some EU-backed transitional justice policies/mechanisms in sectors that align with the government's interests.* In Montenegro's case, Đukanović's positioning as a pro-Europe figure to achieve

[68] *Interview with Political Scientist in Montenegro working for Human Rights Action*. Mount Holyoke College. September 18, 2024.

independence shows that joining the EU was his main interest: to do so, he opposed Milošević's wartime policies and pushed for independence. However, his record regarding the implementation of transitional justice is far from pristine. Instead, in many ways his government worked to repress Montenegro's history of war crimes through erasure and revisionism. In the case of post-accession Croatia, consistently backsliding in relation to transitional justice and increasing anti-Serb sentiment is illustrated by changing narratives of Operation Storm, as government officials increasingly seek to portray the operation as heroic and necessary and deny the occurrence of war crimes by glorifying this event and omitting details regarding Serb casualties. This backsliding intensified in 2024 with the inclusion of the Homeland Movement in the coalition government, which seeks to prevent the main Croatian Serb party from participating in government.

Competing Demands and Powerful Neighbors: Đukanović's Montenegro, 2000-23

Because it was united with Serbia until 2006, Montenegro has a much lower profile in the Western Balkans when it comes to the wars of the 1990s. Additionally, it represents a unique case because it split from Serbia peacefully through a political process facilitated by the EU, rather than through war or violence. In the following sections, I first describe Montenegro's internal politics during the 1990s and its separation from Serbia, before describing the state of transitional justice within the country and its progress in the EU accession process. In doing so, I demonstrate that despite having a complicated relationship with Milošević's Serbia, Montenegro was complicit in war crimes perpetrated on the territory of the former Yugoslavia. Although there have not been decisive actions by the Montenegrin government to acknowledge its role in perpetrating harms in the 1990s, there has been some compliance in sectors that align with the government's existing narrative, showing a form of selective compliance.

Montenegro During the Dissolution of Yugoslavia, 1992-2000

When Milošević rose to power in Serbia, his first strategic move was to gain control over the federal government of Yugoslavia by installing loyal supporters in four of the eight federal seats of each republic and province. In Montenegro, he installed Branko Kostić, who formed Montenegro's political leadership alongside Prime Minister Milo Đukanović and President Momir Bulatović in the early 1990s. This meant that the government leadership were all in support of Milošević's war policies, as Kostić was Milošević's man in Podgorica and both Bulatović and Đukanović were photographed alongside Montenegrin soldiers who participated in the attack on Dubrovnik (Kovacevic 2007, 73). In April 1992, after the international community recognized Slovenia, Croatia, and BiH, and Macedonia declared independence, the Federal Republic of Yugoslavia was composed of Serbia (and Kosovo) and Montenegro. Although the constitution guaranteed an equal division of power, the Montenegrin government was controlled by Milošević's supporters: in the 1992 elections, Bulatović once again was elected President under a new constitution, and Đukanović's Democratic Party of Socialists (DPS) won a majority of parliament seats. As sanctions by the West against Yugoslavia intensified in response to Milošević's war policies, Montenegro became a hub for illegal trade and transnational crime. Đukanović would later testify that this was the only way his government was able to meet budget needs (Kovacevic 2007, 72-75).

The strength of the Milošević faction began to decline in the 1996 elections. Following the end of the war in Bosnia, the opposition in Serbia won in most municipalities, although these results were not recognized by Milošević. In Montenegro, this strengthened anti-Milošević sentiment and cast doubts on the government's strategy of aligning itself with Milošević. This caused a split in the government, with Bulatović representing the pro-Milošević faction and

Đukanović representing the anti-Milošević faction. In 1997, Đukanović challenged Bulatović for the presidency. He appealed to the opposition parties for support by portraying himself as a lesser evil and hinting at independence. In the first round, he received 145,337 votes, losing to Bulatović's 147,606. This led to a second voting round because neither candidate received 50 percent of the votes. Only by strengthening his pro-independence rhetoric was Đukanović able to win the election in the second round. This led to extreme levels of political tensions within Montenegro: Bulatović threatened to not give up the presidency and protestors (many bussed in from Serbia) attacked the parliament building. The police attacked the protestors and arrested the leaders, while Bulatović fled to Belgrade (Kovacevic 2007, 75-78).

Đukanović's rule through DPS would continue uninterrupted for over two decades. While he did oppose Milošević and attempt to align himself with the West, it would be incorrect to describe him as a benevolent, democratic leader. He used the same tactics as Milošević to maintain control, including repression of civil society, control over the media, and intimidation during electoral campaigns (Vuković 2015, 74-75). Đukanović continued to ally himself with the anti-Milošević coalition, while Bulatović's faction of the party split off and renamed itself the Socialist People's Party (SNP). Over the next year, Đukanović and his party became increasingly pro-independence. When Serbia's military campaign intensified in Kosovo at the end of 1998, this pro-independence rhetoric was combined with a pro-Western stance, as Đukanović increasingly sought to portray himself as "a friend of the West" (Kovacevic 2007, 79). While this did spare Montenegro from the NATO bombing campaign in March-June of 1999, this once again led to very tense relations between Đukanović's government and pro-Serbian groups, resulting in several small skirmishes between the federal military, (controlled by Milošević), Serbian paramilitary groups, and the Montenegrin police. Following the end of the war in Kosovo, Milošević's grip on power

weakened. In an attempt to retain power, he changed the constitution to reduce Montenegro's power, leading Đukanović to declare a boycott of all federal directives. This meant that during the elections in 2000, voting locations in municipalities controlled by anti-Milošević parties could not be located on municipal property. Voters in many municipalities found themselves casting their votes in the private homes of SNP leaders. Only 25 percent of voters cast their ballot, and of those, only 20 percent voted for Milošević. In Serbia, Milošević also lost, and, after some reluctance, admitted defeat on October 6 (Kovacevic 2007, 82).

The Separation from Serbia, 2002-06

After the ousting of Milošević, relations between Serbia and Montenegro remained unresolved until March 2002, when the EU High Commissioner for Common Foreign and Security Policy Javier Solana convened a meeting between Montenegrin, Serbian, and federal officials to discuss the future of relations between the two entities. This resulted in the Belgrade Agreement, which created a constitutional charter made up of delegates from Montenegro, Serbia, and the federal government to write a constitution for the Serbia-Montenegro Union (no longer called Yugoslavia). Although in theory the three groups had equal power, the Serbian and Yugoslav delegates sided with each other, leaving the Montenegrin delegates in the minority. While the Serbian and Yugoslav delegates were attempting to create a more permanent arrangement, several of the Montenegrin delegates saw the new arrangement as transitional. The Serbia-Montenegro union was declared in March 2003; one of Đukanović's top supporters was the first President of the new Union, showing clearly that Montenegrin independence was not far off (Kovacevic 2007, 87).

After the Serbian parliamentary elections of 2004, Đukanović's government moved even closer to independence. The EU sent diplomat Miroslav Lajcak to facilitate talks. He stated that

for an independence referendum to be recognized by the EU, it would need to pass with a minimum of 55 percent in favor. Despite the fact that the current level of support for independence was at approximately 53 percent, Đukanović accepted this out of a need for EU support. In May 2006, the EU and other international organizations sent thousands of observers to ensure a fair vote. With a record high turnout of 86.5 percent, the referendum passed at 55.5 percent, and Montenegro was recognized as an independent state shortly after by the EU, Russia, the US, and, reluctantly, Serbia (Kovacevic 2007, 89-90).

Transitional Justice and EU Accession in Montenegro

Unlike Croatia, BiH, and Kosovo, Montenegro did not achieve independence through violence, nor was it the main perpetrator of violence. However, it was a part of the federal union of Yugoslavia, and many Montenegrins were in the federal army during the wars in BiH and Kosovo. Because of this, much of transitional justice in Montenegro has to do with prosecutions of Montenegrins who participated in war crimes on behalf of Yugoslavia (Griessler 2020, 35). Domestic prosecutions are handled by the State Prosecutor's Office and the Special Department for war crimes. In 2018, Amnesty International expressed "concern that impunity for those responsible for war crimes persists" (Amnesty International 2018). The statement further highlighted the extremely slow nature of war crimes prosecutions and stated that no cases have been brought against Montenegrin police, which are suspected of using tortured and violence toward the Bosniak population in the Sandzak region from 1992-95. Furthermore, in cases that were prosecuted, Amnesty International noted inconsistencies in the application of international law. In addition to war crimes cases, Montenegro is complicit in several missing persons cases,

including a situation where 83 Bosniaks, who were deported in 1992 from Montenegro to BiH, went missing. Amnesty International labeled this case as a "forced disappearance" case.[69]

Polling done by the Center for Civic Education in Montenegro and support by the US Government on Montenegrin residents' views on transitional justice shows that 55 percent do not believe that Montenegro has sufficiently dealt with its role in the wars. Transitional justice is supported by 61 percent, while 28 percent oppose it (Vukanovic 2021, 13). However, as distrust in the judiciary grows, only one third believes that the judiciary is equipped to handle these cases. In 2020, trust in the judiciary was 60 percent, while in 2021 it was 44 percent. This opinion is even more commonly found among Bosniaks, while Serbs express the opposite opinion (that the judiciary *is* equipped to handle these cases) (Visnjic 2024c). As a political scientist working with a CSO in Montenegro put it in an interview, "[it's] the same government—the same party—that was in Dubrovnik; they just changed the suits, and [now] they say, "Oh we're pro-European."[70] An example of this is the ongoing investigation of Milivoje Katnic, for crimes committed during the attack on Dubrovnik when he was an officer in the Yugoslav People's Army. Katnic was Chief Special Prosecutor from 2015 to 2022. He was first investigated in 2018 (while in this position) for additional crimes perpetrated in Croatia. However, the investigation was closed due to lack of evidence (Visnjic 2024c).

Over time, however, there have been some improvements. In 2009, Freedom House noted improvement in the judicial sector,[71] and the 2011 progress report by the EC stated that

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[69] Montenegro: The right to redress and reparation for the families of the "disappeared". Amnesty International. December 21, 2006. https://www.amnesty.org/en/documents/eur66/001/2006/en/.

[70] Interview with a political scientist working with Human Rights Action. Mount Holyoke College. September 18, 2024.

[71] Freedom House, *Freedom in the World 2010 – Montenegro*, https://freedomhouse.org/sites/default/files/2020-03/FIW_2010_Complete_Book_Scan.pdf.

“Establishment of the legal and institutional set-up required for an independent country is complete.”[72] Judicial reforms also continued in 2011, with improvements made regarding the independence of the judiciary, and a new strategy to improve conditions for displaced people from the wars was introduced (in 2011 there were over 1,500 displaced people from surrounding countries in Montenegro). Interestingly, the government supported the construction of a memorial dedicated to the Bosniak victims of deportations and war crimes in 1992, but did not align its relevant case law with the ICTY’,[73] showing a clear form of selective compliance. During the 2016 elections, Đukanović positioned himself as the pro-Europea candidate by highlighting his continued efforts to join the EU and NATO while characterizing his opposition as pro-Russian. This led to strong performance in the polls for his DPS party. On election day the Montenegrin authorities arrested 20 Serb and Russian citizens on allegations of planning a coup and intending to assassinate Đukanović; some were subsequently released, including Russian nationalists who formerly fought in eastern Ukraine. Đukanović accused a pro-Russia opposition party (Democratic Front) of being behind the alleged coup attempt, while Democratic Front accused Đukanović of “manufacturing the events as a means of securing support for the DPS in the elections.” Montenegrin authorities issued two more arrest warrants for Russian nationalists and three Serbian citizens involved in the incident.[74] In 2017 the Montenegrin parliament ratified NATO’s membership treaty amid widespread protests largely led by the large Serb and Russian population. Former wartime President Bulatović, who (as is described above) was a strong ally of Milošević

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[72] European Commission, *Montenegro 2011 Progress Report*, pages 5-221, https://enlargement.ec.europa.eu/montenegro-progress-report-2011_en.
[73] Ibid.
[74] Freedom House, *Freedom in the World 2017*, page 346, https://freedomhouse.org/sites/default/files/2020-02/Freedom_in_the_World_2017_complete_book.pdf.

described NATO as a "criminal military alliance" and members of the Democratic Front called the parliament's actions illegal due to the fact that most Montenegrin citizens oppose NATO membership. Meanwhile, Prime Minister Marković justified the move by saying that "In the current geopolitical environment, Montenegro must rationally look at all options and make a decision that will best protect its national, security, and economic interests" (Tomovic 2017).

Montenegro's government's approach to transitional justice represents the concept of selective compliance because it both attempts to overlook its past complicity in war crimes, while simultaneously positioning itself as pro-European. Its pro-European stance, and Đukanović's success in branding himself as the pro-EU candidate differentiates itself from the reluctant compliance type described in the previous chapter. However, the recurring issues related to transitional justice—illustrated by the lack of prosecutions for former soldiers and the prominence of pro-Serbia and pro-Russia parties—shows an incomplete and selective implementation of EU-backed transitional justice policies.

Regardless, Montenegro has progressed through the accession process. After independence in 2006, Montenegro signed the SAA in 2007 (Djurović and Lajh 2020, 679). Like the SAAs of other countries in the region, the SAA mentions the rights of refugees and IDPs, compliance with the ICTY, and the establishment of good neighborly relations.[75] Montenegro applied for candidacy in December 2008, and in 2010 the EC published a favorable opinion. Accession negotiations began in 2012. Montenegro's selective approach to compliance with transitional justice policies has been overlooked by the EU, however. As a Montenegro-based political scientist explained in

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[75] European Union, *Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Montenegro, of the other part,* 29 April, 2010. https://neighbourhood-enlargement.ec.europa.eu/document/download/4e78f36c-c889-45cf-b511-c5828f1fdbd9_en?filename=lexuriserv2nd_en.pdf.

an interview, "[the EU] had for 13 years [criticized] the lack of a proactive approach in prosecuting war crimes [in Montenegro] […] But all of a sudden, EU removed all the concerns, even though nothing had been done on that matter. So, in these [past] couple of years, the EU is not [putting] pressure [on Montenegro] for the prosecution of war crimes. And that's the main problem."[76] She went on to explain that although joining the EU would be beneficial for Montenegro in many ways, without the EU's pressure to memorialize the past and come to terms with Montenegro's role in the wars of the 1990s, the Montenegrin government will continue its practice of historical revisionism and promotion of a culture of impunity for war criminals.[77] As seen in the following chapter, however, the end of Đukanović's rule in 2023 and the introduction of new leadership creates an opportunity that has the potential to raise Montenegro from selective to cooperative compliance.

Backsliding and Nationalism in Post-Accession Croatia, 2013-25

Croatia is the only country in this project that has become a full member of the EU. As I will show in the following chapter, this came with strong cooperation with the EU's transitional justice requirements throughout the accession process. Despite this, issues of historical revisionism and nationalism persist. This has become increasingly evident in post-accession Croatia, where the loss of pressures and conditionality associated with the accession process has led to backsliding in terms of transitional justice implementation, shifting the country into the selective compliance category.

[76] Interview with a political scientist working with Human Rights Action. Mount Holyoke College. September 18, 2024.
[77] Ibid., Interview.

Transitional Justice in post-Accession Croatia, 2013-Present

Since becoming a member state in 2013, there has been significant backsliding regarding transitional justice and reconciliation in Croatia. An Amnesty International report found, for example, that several hate crime cases against Serbs in Croatia were processed as misdemeanors and hate speech was underreported.[78] In fact, attacks against Serbs increased in the years following accession, and war crimes prosecutions in domestic courts decreased (Strupinskienė and Vaškevičiūtė 2021, 31). Between 2013 and 2017, the Court of Zagreb delivered only nine judgements, despite continual demands from the International Residual Mechanism for Criminal Tribunals (IRMCT) for Croation officials to "show more commitment to impartial implementation of justice" (Strupinskienė and Vaškevičiūtė 2021, 31). Glorification of war criminals and leaders continued, and although the government continued to implement policies aimed at encouraging Serbs to return, NGOs noted that Serbs continued to face discrimination, especially in areas such as housing, healthcare, and access to legal aid. Hate speech and harassment also increased, including an incident in which 48-year-old Croat war veteran Ilija Galvić attacked 63-year-old Radoje Petković, the vice president of the Serbian National Minority Council. Galvić beat Petković until he was unconscious, and Petković died from injuries weeks later (Strupinskienė and Vaškevičiūtė 2021, 35).

Nationalist narratives also returned to commemorations of Operation Storm: at the 20-year anniversary of Operation Storm in 2015, President Kolinda Grabar-Kitarović stated: "We didn't want this war, but we were forced into it and that's the only truth. We defended ourselves." The next year, she said "[Operation] Storm was a politically justified, ethically pure and brilliant

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[78] Amnesty International, *Amnesty International Report 2017/18: The state of the world's human rights*. Amnesty International, 2018, https://www.amnesty.org/en/documents/pol10/6700/2018/en/.

military operation that completed the liberation of Croatian national territory. It was an honorable victory for a just cause" (Strupinskienė and Vaškevičiūtė 2021, 36). Following accession, leaders exclusively honored Croat victims during the memorials and erected monuments for them: in 2015 a museum dedicated to Operation Storm was opened in a fortress in Knin and a statue of Tuđman was erected nearby (Nikolic and Milekic 2015). In 2019, Prime Minister Andrej Plenković stated "We respectfully and proudly recall all the fallen Croatian heroes on the battlefields across Croatia" (Vladisavljevic 2019). Since 2015, commemoration events have often featured performances by Marko Perković-Thompson, known for nationalist lyrics, glorification of the Ustaša, and anti-Serb slogans (Strupinskienė and Vaškevičiūtė 2021, 35-37).

2024 marked a shift toward the right when the ruling HDZ party formed a coalition government with the Homeland Movement following the April elections. The Homeland Movement notably offered to support a parliamentary majority on the condition that members of the Independent Democratic Serb Party (SDSS) would not be allowed to participate in government at any level. In an interview with the Balkan Investigative Reporters Network (BIRN), the President of SDSS Milorad Pupovać stated that

> "When someone attacks the participation of Serbs or any other minority in the government, or when support is conditional on ensuring that no Serb can even be a mail courier in a ministry, let alone a department head or assistant, when we can no longer even dream of having ministers, that is a serious regression."

Considering the significant nature of this regression, Croatia's level of compliance may be declining from its currently selective nature to reluctant compliance, which further illustrates the inherent weakness of conditionality policies when it comes to implementing transitional justice: because Croatia achieved the ultimate goal of EU membership; the EU was unable to continue exerting the same level of pressure in the form of conditionality policies, leading to fewer consequences for regression.

Conclusion

As shown above, selective compliance is best exemplified by post-war Montenegro under Đukanović (2006-2023) and post-accession Croatia because in both cases the respective governments pursued transitional justice policies that supported their existing interests, while undermining transitional justice in other sectors. In Montenegro's case, this meant pursuing NATO membership and positioning the government as pro-Europe, at times supporting memorialization for victims of the wars, and separating from Serbia. However, when it came to prosecuting war criminals and officially acknowledging Montenegrin officials' participation in war crimes, the government did not do so readily. In Croatia's case, selective compliance is shown in the way that the government does support policies for returnees, but since accession (and the loss of pressure imposed by conditionality policies) there has been significant backsliding shown through increasingly nationalistic portrayals of Operation Storm and the exclusion of Serbs from government. Through these cases, it becomes evident that even when the EU's conditionality policies can cause some implementation of transitional justice, this is largely done in sectors that align with the government's preexisting interests. In areas that conflict with the government's interests, conditionality policies are less impactful.

Chapter 6

Cooperative Compliance in Pre-Accession Croatia and Post-Đukanović Montenegro

> *"There was pressure [from the EU] for reforms in the governance, judiciary, human rights and [processing of] war crimes. […] For 13 years [they criticized] the lack of proactive approach in prosecuting war crimes […]. But all of a sudden, EU has removed all the concerns, even though nothing has been done on this matter. So, these [past] couple of years, the EU [has not been putting] pressure [on Montenegro] and that's the main problem. EU has to, because we don't want to be like Croatia. [In] Croatia, they said we are dealing […] with war crimes, but they [did not have] common responsibility. And then, when they became members of the EU, [they did] nothing."*
>
> —Political Scientist in working for Human Rights Action in Montenegro.[79]

As pre-accession Croatia worked to become a member state, it implemented transitional justice by largely cooperating with the ICTY and acknowledging the harms perpetrated toward Serb victims. In doing so, the government showed an overall willingness to cooperate with the EU's requirements. Similarly, since the new government in Montenegro came to power in 2023, it has taken several important steps to acknowledge Montenegro's role in the 1990s, such as by opening or continuing investigations into the actions of individuals who were present at violent incidents where Bosniaks, Kosovar Albanians, and Croats were harmed. As a result, Montenegro has made

[79] *Interview with Political Scientist in Montenegro working for Human Rights Action*. Mount Holyoke College. September 18, 2024.

some progress in the EU accession process in the past two years. This illustrates a type of cooperative compliance, which is defined as: *the government cooperated with the EU's proposed transitional justice policies/mechanisms in several sectors*. This form of compliance is best shown in the cases of post-Đukanović Montenegro (2023-present) and pre-accession Croatia (2000-13). In Montenegro, the new government has shown a willingness to confront its past through active prosecution of war crimes cases and the support for the UN resolution commemorating the Srebrenica genocide. This cooperativeness has had positive implications for Montenegro's EU prospects. Considering the recent nature of this political juncture, however, it remains to be seen if cooperative compliance continues, or if it will have long-term positive impacts. In pre-accession Croatia's case, cooperative compliance resulted in EU membership and was shown through Croatia's overall efforts to support Serb returnees and comply with the ICTY. However, as is demonstrated in the previous chapter on post-accession Croatia, this level of cooperation did not continue after accession.

Hope for the Future and Recent Developments in a Post-Đukanović Montenegro

After over three decades in power, Đukanović lost the presidential election in 2023, leading the Democratic Party of Socialists (DPS)—the successor of the Montenegro League of Communists—to lose power for the first time since 1945. Jović Milatović of the Europe Now Movement (PES) party won the presidential election with 58.88 percent of the vote. This election occurred under strong influences of ethnic nationalism: through the campaigning period, "Đukanović portray[ed] Milatović as a manipulator who presented himself as pro-European and democratic but was essentially a Serbian nationalist and Russian asset aiming to change Montenegro's strategic (geo)political course" (Baća 2023). Meanwhile, Đukanović positioned himself as the pro-

European candidate, who had fought for Montenegro's independence. Regardless, Milatović's campaign also positioned itself as a pro-European campaign by centering values such as reconciliation between ethnic groups, economic development, and social justice. He called Đukanović "Europe's Last Dictator" and accused him of ties with organized crime networks, and of facilitating systemic corruption and ethnonationalist divisions (Baća 2023).

Montenegro Since 2023

In several ways, the two years since the end of the DPS's rule has ushered in several positive developments: the newly formed Parliament approved several important judicial appointments and passed 12 EU-supported laws related to the judiciary, anti-corruption, and the media. In summer 2024, the government voted in support of the UN General Assembly Resolution to commemorate the Srebrenica genocide, despite the controversy it caused among the Serb population.[80] As of June 2024, all 33 chapters were opened, and three (Science and Research, Education and Culture, and External Relations) have been provisionally closed. During the 16th Intergovernmental Conference in June 2024, the EU confirmed that Montenegro has "overall" met the benchmark requirements of Chapters 23 and 24, which have to do with the Judiciary and Fundamental Rights, and Justice, Freedom, and Security, respectively.[81] Interestingly, Chapter 31—on Common Foreign and Security Policy—was to be closed as well. However, this was blocked by Croatia due to ongoing bilateral issues related to ownership of the navy training ship "Jadran," the prosecution of war crimes, and the search for missing persons (Al Jazeera 2024). This was also part of Croatia's

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[80] European Commission, *Country Report 2024 – Montenegro*, https://enlargement.ec.europa.eu/montenegro-report-2024_en.

[81] European Commission, *Key Milestones – Montenegro,* https://enlargement.ec.europa.eu/enlargement-policy/montenegro_en#key-milestones.

reaction to a resolution passed in the Montenegrin parliament in June, called the "Resolution on the Genocide in Jasenovac and the Dachau and Mauthausen camps" put forth by pro-Serbia politicians in response to the earlier UN resolution to commemorate the Srebrenica genocide. This resolution described genocidal actions by the Croatian Ustaša in the World War II Jasenovac death camp in which the Ustaša detained and killed thousands of Jews, Serbs, and Roma. Additionally, Croatia declared three pro-Serbia officials from Montenegro, including the speaker of parliament and the deputy prime minister, as *persona non grata* in Croatia, and demanded the delimitation of a maritime border (Wankiewicz 2024).

While it is important to not be overly optimistic about this new government, as issues regarding interethnic reconciliation between Serbs and the Montenegrin government persist, this turning point in Montenegro's history does have the potential to improve the country's record with transitional justice and to finally integrate it into the EU. In April 2024, President Milatović called on the "competent authorities" to work to establish the truth about crimes committed by Yugoslav soldiers against Albanians in Kaludjerski Laz, on the border with Kosovo. "The victims deserve justice, and that's why I appeal to the competent authorities not to give up on establishing the complete truth and the responsibility of the perpetrators. Also, I call for the erection of a dignified memorial that will permanently honour the victims [and] also serve as a place of instruction for future generations," he said (Visnjic 2024b). In February 2025 the Special State Prosecutor's Office reopened cases that previously accused 36 individuals of participating in war crimes in Morinj, Bukovica, Kaludjerski Laz, and deportations of refuges in Herceg Novi. Because war crimes do not have a statute of limitations, special investigative teams now have been tasked with analyzing the four cases of these events, obtaining new evidence, and searching the database of the International Residual Mechanism for Criminal Courts (Visnjic 2025). Clearly, this new

government has taken a more active approach to complying with transitional justice, and this has paid off in terms of the EU accession process. Because of this, Montenegro now represents a more cooperative type of compliance. It remains to be seen if this positive record continues as time passes.

When Push Comes to Shove: Transitional Justice in a European-Hopeful Croatia, 2000-12

Croatia's membership in the EU is reflective of a successfully completed transitional justice program according to the EU. However, considering the persisting issues present to this day that reflect tensions between interethnic groups and nationalist portrayals of Croatia's independence, it is clear that the government incompletely implemented transitional justice and based it entirely around the goal of EU membership. Below, I first provide an overview of Croatia in the 1990s under the Tuđman government, before describing the political environment, transitional justice, and EU accession following Tuđman's death in 1999. Through this, I show that despite the apparent success of the EU's "carrot and stick" conditionality approach when it comes to getting Croatia to comply with the ICTY's demands during the accession period, this conditionality achieved cooperative implementation during the accession process, but little long-term success (as is evidenced in the prior chapter on selective compliance and Croatia in the years since accession).

Independence and its Aftermath, 1990-2000

The first multiparty elections in Croatia were held in 1990. In the months prior to these elections, only 15 percent of voters favored independence, while 64 percent preferred a more confederal model. Furthermore, only 37 percent of voters listed the issue of independence as a top political issue of the election (Gagnon 2004, 135). At this time, Croatia represented one of the "most liberal

and open places in Yugoslavia" with high levels of multiethnic coexistence (Gagnon 2004b, 134). Ahead of the elections, Slobodan Milošević began his campaign of filling the airwaves with rhetoric meant to divide the Croat and Serb populations and destabilize the rule of the Croatian branch of the League of Communists (SKH, Savez komunista Hrvatske). Because of this, HDZ, led by Franco Tuđman, was able to gain popularity through a combination of pro-democracy and anti-Milošević rhetoric, by positioning themselves as the only protective force against Milošević's attacks (Gagnon 2004, 137). As the former SKH leader Ivica Račan noted,

> "Milošević's aggressive policy was the strongest propaganda for Tuđman. Milošević was sending his gangs to Croatia, where they were dancing and singing: 'This is Serbia' which provoked and liberated the national pride and the nationalist reaction of Croats which was effectively used by Tuđman" (Silber and Little 1997, 84).

Because the HDZ was comprised of a range of individuals—some were moderates formerly associated with SKH who had been purged during the Croatian Spring of 1971, and some were more hardline nationalists who sympathized with the Ustaša—the party espoused a dual message of pro-democratic ideals and protections for ethnic minorities on the one hand, while on the other linking Croatian Serbs to Milošević' aggressive politics. On the eve of his election, Tuđman stated "there will not be revenge, the HDZ will come out for full equality of all citizens in Croatia" (Gagnon 2004, 138).

In reaction to the election of HDZ, Serbian politicians in Croatia began advocating for "cultural autonomy" and quickly created nearly a dozen autonomous "Free Serbian Joint Municipalities." Although many of these municipalities were Serb majority, there were also large numbers of non-Serb populations living there as well. Additionally, this movement was portrayed by Milošević as a local movement led by local Serbs, but there was a very top-down aspect to it in which SDS promoted a need for an autonomous zone regardless of local Serbs' desires. Over the

course of July and August 1990, SDS leaders set up roadblocks in the Knin region in preparation for confrontation with the Croatian police. On August 18, they held a referendum to officially create an autonomous zone in which any Serb living in Croatia could vote but non-Serbs living in these municipalities could not (Gagnon 2004, 142-43).

The HDZ government negotiated with SDS moderates throughout the summer and fall in an attempt to avoid violence. However, SDS hardliners saw this as betrayal and, under directions from Belgrade, pushed out any SDS moderates who attempted to negotiate with the HDZ on the municipal level. As SDS hardliners continued to push moderates out—especially those who refused to prepare for violent confrontation—Croat-majority municipalities in this area of Croatia began to arm themselves as well, fearing violence from the Serbs. HDZ hardliners were also undermining HDZ moderates' attempts at negotiations by passing anti-Serb policies on the municipal level, such as requiring loyalty oaths and Serb policemen to wear the šahovnica (an Ustaša symbol) as a part of the uniform. In doing so, HDZ hardliners proved SDS hardliners' accusations about the HDZ's anti-Serb policies correct, which led to the movement's growth and failures of moderates on both sides attempting to negotiate a peaceful settlement (Gagnon 2004, 147-48). Outright violence broke out in March 1991 between Serbian paramilitary groups—supported by Belgrade—and HDZ extremists (Silber and Little 1997, 143-35).

In June 1991, after declaring independence, Tuđman formed a coalition government. This coalition strengthened the moderates within the government, leading the hardliners to attempt a coup against Tuđman, which failed. Paramilitary groups linked to HDZ began a campaign of ethnic cleansing against Serbs. Right-wingers argued that because Croatia was in a defensive war it was at liberty to commit what would otherwise be called war crimes. This included the killing of 24 Serb civilians in Gospić in October 1991, and the killing of a Serb family (including a 12-year-old

girl) in Zagreb (Gagnon 2004, 152). The war continued to escalate; in fall and winter 1991 the Croatian forces (the police and paramilitary groups) began retaking parts of territories connected to the Krajina zone, and Milošević reluctantly agreed to the presence of UN forces. Although this did succeed in preventing further escalations, civilians within the SDS-controlled Krajina zone and HDZ municipalities faced brutal repression from both sides. SDS continued to expel non-Serbs, and Serbs outside the Krajina zone were harassed by the HDZ (Gagnon 2004, 153).

As the Croatian people continued to favor democracy, Tuđman increasingly relied on repression, intimidation, and war policies to hold onto power—including through provoking violence between Bosniak Muslims and the Croats in BiH. Tuđman presented himself as a moderate and placed other moderates in positions of power on the national level but supported the extremists behind closed doors. Following the elections in 1993, HDZ hardliners came out in support of full-scale war in BiH, which was not supported by the war-weary population. Regardless, Tuđman and the extremists worked with their hardline counterparts in Croat-dominated areas in BiH to oust moderate leaders and replace them with Croat nationalists. Because of the lack of support for the war within Croatia, this was done in secrecy: while HDZ moderates in Croatia opposed the war in public, Tuđman worked behind the scenes to provoke conflict between Croats and Bosniaks in BiH (Gagnon 2004, 159-62). The war in BiH came to an end for Croats in February 1994 when the United States placed pressure on Tuđman to sign the Washington Agreement which created the Federation (Gagnon 2004, 166).

As the US sought a counterweight to Serbia's power in the Balkans, it unofficially allied itself with the Tuđman government. By 1995, the HDZ right was unpopular throughout Croatia: polling showed that the opposition leader Budiša would win over any leader put forth by the HDZ. To fix this, the HDZ sought a military solution, leading to the invasion of the Krajina region to

retake the territories SDS had captured. Croatian authorities made no attempts to prevent looting and violence toward civilians. Despite Tuđman's assurances that Serbs would be a protected minority in Croatia, many Serbs fled to Serbia. This only helped HDZ regain further popularity, since a significant oppositional population no longer existed. For the first time that year, support for the HDZ went over 50 percent in newspaper polling. Hoping that this increase in support would help them win and fearing that support would decrease again, HDZ called an early election. They did not win a two-thirds majority, however, and lost control over several important urban municipalities, including Zagreb. Tuđman refused to recognize the opposition's pick for mayor, which led to HDZ losing even more support. Tuđman died in 1999 prior to the 2000 elections: the HDZ lost in every constituency except Eastern Slavonia (which had been part of the Krajina zone). Stipe Mesić, who distanced himself from HDZ—particularly its policy in BiH—and stressed ethnic coexistence and reconciliation, won the presidency (Gagnon 2004, 173-74).

Transitional Justice in Pre-Accession Croatia, 2000-03

Croatia's relations to the European Union during the 1990s was tense: although the country stressed its European identity, after emerging from the increasingly confederal structure of Yugoslavia Tuđman and the HDZ were hesitant to sign onto the post-Maastricht EU, which, to them, represented a similar project that was doomed to fail. Furthermore, when the EU advocated for accountability for Croatian troops in Krajina and BiH, Tuđman pushed back, saying:

> "Some European states dare to teach us lessons on how to treat minorities. They have forgotten that a democratic France, for example, does not even recognise the existence of minorities on its soil. Or, they urge us that we must return all Serbs who fled Croatia during the war back to Croatia, but they forget that they could not solve problems like that between the Czech Republic and Germany, etc." (Jović et al. 2009, 20).

Relations between Croatia and the EU were frozen from 1995 until 2000 when the HDZ lost power. After the elections, the EU held the Zagreb Summit, where it created the SAP, and in 2001 it signed the SAA with Croatia. Lack of cooperation with the ICTY, however, blocked Croatia from joining the 2004 enlargement (Jovic et al. 2009, 23). Also in 2004, the ICTY delivered two sealed indictments for Mladen Markać and Ivan Čermak, who the government soon delivered to the Hague, leading the EU to grant candidate status to Croatia in June 2004 following a favorable report by the ICTY (Menz 2013, 28).

Following Tuđman's death and the HDZ's decline, the Opposition Six—a coalition of opposition parties that had previously been blocked from power by the HDZ—formed a government with Prime Minister Ivica Račan. Like Serbia, these opposition parties found themselves caught between international demands to comply with the ICTY on the one hand, and domestic pressures to protect individuals seen as national heroes on the other. Among these "heroes" was General Ante Gotovina, who was instrumental in what Croats call the "Homeland War," referring to the conflicts following the declaration of independence in 1991. Due to widespread speculation in the media that Gotovina was on the ICTY's list of indictees, Račan quietly ordered the Croatian Historical Institute to launch an investigation into the "history, scope, and nature of the victims of the Homeland War" in 2001 (Grodsky 2009, 698). This investigation was highly similar to the Yugoslav truth commission created by Kostunica in Serbia: state funding for the project was limited, it was closed off from civil society, and individuals involved noted that there was pressure to investigate international actors' roles in order to externalize blame or rationalize the Croatian government's actions (Grodsky 2009, 698).

Overall, the Croatian truth commission was aimed at reducing international pressures to hold Croatian officials accountable while avoiding full compliance with the ICTY, which would

be seen as unpatriotic. Furthermore, Račan saw this as a way to depoliticize the war, describing it as an attempt to "depoliticize war crimes ... to leave history to the historians, not the politicians" (Grodsky 2009, 699). The extremely low profile of this investigation among civil society in Croatia reflected the highly sensitive nature of the Homeland War. As one member of parliament said, "in Croatia, the truth is very simple. We were attacked by Serbs and defended ourselves" (Grodsky 2009, 699). Political leaders who questioned the Croatian government's role in the war risked losing influence and credibility (Grodsky 2009, 698-99). After the Historical Institute completed the project, researchers were given an additional three years to explore the issue further. However, because the government did not publicly support the project, it had an extremely low profile in Croatia (Grodsky 2009, 698).

When the ICTY issued indictments for Gotovina and two additional high-ranking Croatian generals (Rahim Ademi and Janko Bobetko) in 2001, Croatian nationalists equated "the tribunal's indictments against Croatia's war heroes with attacks on the dignity and legitimacy of the so-called Homeland War" (Peskin and Boduszyński 2003, 1117). In mid-2001, the Račan government ceased fully complying with the ICTY, and criticized the tribunal's attacks on Croatia's history. Soon after, the second largest party in the government, the Croatian Social Liberal Party (HSLS), left the coalition, saying that Račan should have been more explicit in defending the Homeland War narrative. The HDZ—now an opposition party—organized protests against international and domestic war crimes prosecutions, including a 150,000-person event in Split in February 2001 (Jović et al. 2009, 13-15). Tuđman's successor as leader of the HDZ, Ivo Sanader, defended the Homeland War narrative, saying:

> "The [election of] 3 January 2000 was one big misunderstanding. I am joining here all these who will never give up in their pride and persistence. No nation would abandon its heroes. Nor will the Croatian nation abandon the best of all Croatian sons – and these are General Bobetko, and all the other generals, including one who

> is not with us physically but who is with us in spirit – General Mirko Norac ... The shameful politics of this government forces our generals, our Croatian officers, into hiding; they are forcing them to be ashamed of themselves and of what they did for Croatia ... Here is our message to that government: we are proud of our Croatian generals, we are proud of our Croatian officers, we are proud of all those who defended the homeland…" (Jović et al. 2009, 15).

This helped the HDZ in the polls: in May 2001, 16 percent of the electorate supported them; in June 2002 this rose to 23 percent, and in February 2003, this number was 30 percent. In polls in September 2002, 84 percent of Croats opposed handing Janko Bobetko over to the Hauge. In the 2003 elections, the HDZ won 43.4 percent of the vote and 66 out of 151 seats in parliament (Jović et al. 2009, 15-16).

The Shift to Cooperative Compliance, 2003-13

After it gained power in 2003, however, the HDZ completely changed its stance on the ICTY: between 2003 and 2007, it increasingly cooperated with the tribunal and reformed its foreign policy agenda. The state-owned television refused to carry paid advertisements by the Croatian Party of Rights (HSP), many of which were snippets of Sanader's anti-ICTY speech only years earlier. Overall, the HDZ converted itself from a party of nationalist extremists to a pro-EU, center-right party, which largely ended representation of extremists in the Croatian government (Jović et al. 2009, 16). While a surprising development, this massive reorientation of the party was the product of years of infighting following the death of Tuđman. Sanader, a moderate, emerged as the leader of the party after he managed to narrowly win the intra-party elections, and with his electoral win in 2003 he secured his position as party leader (Jović et al. 2009, 17-18). Furthermore, their implementation of transitional justice in the following years—largely in the form of compliance

with the ICTY, policies supporting right of return for Serbs, and attempts to combat ant-Serb sentiment in several sectors—illustrates cooperative compliance in a European-hopeful Croatia.

In 2003, Serbian Prime Minister Zoran Đinđić was assassinated by members of the Serbian Police Unit for Special Operations and groups associated with organized crime networks days after he appointed a special state prosecutor for war crimes. This sent signals throughout the region that extremists involved in the wars had not been fully defeated, and that they were still playing a central role in the Balkan political scene. Because of this, Sanader welcomed some of the ICTY's demands, as they allowed him to eliminate similar extremist forces in Croatia (Jović et al. 2009, 18-19). Sanader's second tactic for consolidating power was forming a coalition government with the Independent Democratic Serb Party (SDSS). This partnership helped ease tensions between Croats and Serbs on the national level, improved bilateral relations with Serbia, and made advocating for cooperation with the ICTY easier within the national government (Jović et al. 2009, 19). This reflected the domestic support for EU integration, and the recognition that integration would be impossible without compliance with the EU's transitional justice requirements.

Despite remaining nationalist narratives, Sanader's compliance with the ICTY received little domestic pushback, as he had made an agreement with Račan and the SDP to cooperate when it came to issues relating to EU accession. Membership talks with the EU were scheduled to begin in March 2005, but Croatia's reluctance to aid in the arrest of Ante Gotovina resulted in delays. The HDZ's decision to protect Gotovina was based on a miscalculation that the country's good record with the ICTY would afford them some leniency. However, at the same time, the EU was attempting to track down Serb indictees Ratko Mladić and Radovan Karadzic, and needed a high-profile Croatian fugitive to prove to Serbia that it was not biased against Serbs (Menz 2013, 28-31). As a result of Croatia's lobbying efforts and the strength of the Vatican within the EU, it was

able to convince the EU to open accession talks in October 2005 (Jović et al. 2009, 24-25). Soon after, in December in 2005, Croatia extradited Gotovina to the Hague (Menz 2013, 31).

While Croatia did cooperate with the ICTY during the accession process, ongoing developments to this day show that this did not fully get rid of nationalist narratives of the wars. One flaw in the EU's approach was that its idea of transitional justice was oriented almost fully around the ICTY, which had the effect of weakening local transitional justice efforts. This resulted in compliance with EU regulations that was "pragmatic and artificial" (Strupinskienė and Vaškevičiūtė 2021, 13). While there were significant legal and institutional improvements related to minority rights during the accession period, EC reports repeatedly noted cases in which Serbs faced harassment, discrimination, and verbal assaults. A 2006 Human Rights Watch noted that Serb returnees "face significant obstacles in Croatia to the full enjoyment of their human rights, despite a raft of government programs designed to promote their reintegration."[82] In 2013, the Ombudsman's report highlighted high unemployment among returning minorities (68 percent), and insufficient social inclusion.[83]

Some examples of Croatia's cooperative compliance (in addition to its overall compliance with the ICTY, include President Josipović's 20011 comments that briefly mentioned crimes committed against Serbs, and in 2012 when he stated "To win the peace, means to lend a hand to our fellow Serb countrymen, to recognize their victims and bow in front of them" (Strupinskienė

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[82] Human Rights Watch, *Croatia: A Decade of Disappointment Continuing Obstacles to the Reintegration of Serb Returnees*, 2006. https://www.hrw.org/report/2006/09/04/croatia-decade-disappointment/continuing-obstacles-reintegration-serb-returnees.

[83] UNHCR: Immigration and Refugee Board of Canada, *Croatia: Treatment of minority groups, including Roma, Serbs, Bosnians, and Romanians; state protection available in cases of violence and discrimination, including legislation*, 2015, https://webarchive.archive.unhcr.org/20230521060230/https://www.refworld.org/docid/55bf4ac04.html.

and Vaškevičiūtė 2021, 26). Additionally, Prime Minister Milanović acknowledged that Croatia was not "proud about the Serbian losses during Operation Storm" (Strupinskienė and Vaškevičiūtė 2021, 26). As is explored in the prior chapter on selective compliance, however, Croatia later stopped cooperating with the EU's transitional justice requirements. This downward trajectory began in 2012, when Gotovina and Markać were acquitted on appeal after the Appeals Chamber concluded that the Trial Chamber "erred" when it concluded that artillery attacks ordered by Gotovina and Markać were unlawful (BBC News 2012). They were welcomed back by an enthusiastic and supportive population and labeled as national heroes.

Overall, throughout the accession process, the EU and the ICTY coordinated their "sticks and carrots" approach: progress in the accession process was dependent on cooperation with the ICTY, which both strengthened pro-European actors in Croatia and weakened nationalists (Jović et al. 2009, 23). The EU set out 35 chapters that Croatia would need to complete; this process continued smoothly until 2008, when Slovenia began vetoing the opening and closing of new chapters due to unresolved border issues left over from the 1990s. Following the 2009 Croatian elections, Slovenia and Croatia agreed to submit the issue to an impartial arbiter and resume negotiations. Negotiations continued smoothly until 2011, when the European Commission issued a favorable opinion on Croatia's accession. In December 2011, the EU announced that Croatia was ready for membership and both parties signed the accession treaty. In 2012, the Croatian public voted in a referendum to join the Union, and in 2013 it became an official member (Cerruti 2014, 781-82). Throughout the process, Croatia largely did comply with transitional justice policies support by the EU (mainly cooperating with the ICTY), apart from some brief moments of opposition. This represents a form of cooperative compliance, in which the government cooperates with the EU's proposed transitional justice policies to achieve membership.

Chapter 7

Conclusions and Applications

The chapters above provide a comprehensive overview of the EU's attempts to promote transitional justice in the Western Balkans through conditionality-based enlargement policies in the last 25 years. As shown in chapters three through six, this program has had varied results both across cases and within countries over time. The results are shown through the four types ranging from non-compliance to cooperative compliance, with reluctant compliance selective compliance as two intermediary categories. In the following sections, I highlight these key findings and discuss the policy implications that arise from this research, before outlining opportunities for future research on this subject.

Key Findings: Varied Success Across Cases and Time

Despite the EU's continued efforts to promote democratization, regional cooperation, and transitional justice in the Western Balkans by using the prospect of eventual accession to the Union as leverage, problems persist in these areas and EU accession remains elusive to all but one of the countries included in this study. Even in the one country that did successfully join the EU, there has been significant backsliding in relation to democracy, human rights, and transitional justice in recent years. However, this lack of success is not uniform across the region; there are important variations across cases and across time.

This observable variation is reflected in the four types. In the non-compliance type, one can see a clear lack of compliance with EU-backed transitional justice. This is illustrated in BiH's political environment since the turn of the century and in Serbia in the last decade under the leadership of Aleksander Vučić. In the first, this is due to the ethnicization of political life, dependency on international actors (the OHR in particular) and the Serb secession movement led by Milorad Dodik. In the latter, this is shown by the glorification of war criminals, narratives of self-victimization, and historical revisionism in textbooks. Other cases show a slight improvement and so can be labeled as reluctantly compliant. This is true for Kosovo, where the government has implemented the Specialist Chambers and agreed to implement the Associations/Communities of Serb Municipalities, and in the Serbia up until approximately 2015, when there was some compliance with the ICTY. In both cases, however, the high levels of domestic pushback to compliance and the incomplete or inconsistent implementation of transitional justice signals a level of reluctance.

In post-accession Croatia and Montenegro up until 2023, the respective governments implemented transitional justice when it served their interests: for example, honoring specific groups of victims over others in Croatia, or highlighting a pro-Europe stance to separate Montenegro from Serbia, considered by many to be the main perpetrator of the wars. This falls under selective compliance in which the government picks and chooses which type of transitional justice to implement to promote its interests. Lastly, the most successful cases in this project showcase cooperative compliance. This can be seen in Croatia prior to accession, when the government complied with the ICTY regularly, made efforts to promote interethnic reconciliation, and worked to combat discrimination against Serbs. Similarly, in Montenegro, under the new government, there have been several steps taken to promote reconciliation and address

Montenegro's role in the wars of the 1990s in the form of new investigations and prosecutions. This variation in levels of success is attributed to several factors, including the EU's inconsistent application of conditionality, the rise of enlargement fatigue and concerns over the decreased absorption capacity of internal EU institutions.

Policy Implications

There is no simple solution to promoting interethnic reconciliation in the Western Balkans because the legacy of the wars continues to play a prominent role in regional politics. This is understandably so, considering the brutal acts committed during the wars, and the massive loss of life and suffering that resulted from the violent dissolution of Yugoslavia. However, there are steps that the EU can take to strengthen its approach to the implementation of transitional justice. While there are no guarantees that this will lead to thick reconciliation, these steps can, at least, prevent further harm from being perpetrated on individuals in the region.

Strengthen Local Ownership Over Governance

While EU initiatives such as the Regional Cooperation Council and Regional Youth Cooperation Office shows the Union's existing desire to do this, there is still a long way to go when it comes to increasing local ownership over governance and justice. There is already hope that local movements will make a change: in Serbia, university students have been protesting since November 2024 against government corruption. According to recent interviews with students in involved in these protests, their nonpartisan, value-based movement has become the most significant domestic challenge the ruling party has faced since it came to power over a decade ago, and is bigger than the protests of 1996-97 and 2000, which were considered the most significant

protests in Serbian history.[84] Considering the highly controversial nature of the EU's transitional justice program, the students are not looking for EU endorsement, but rather hope that the EU gives local movements the space to create change on their own.[85] While this movement is not directly connected to transitional justice, their desire for a more democratic and transparent government can, in the long-term, result in a more human rights and justice-oriented government.

Strengthen Internal European Union Institutions

The internal fractures shown within the Union in recent years (most prominently, Brexit) have caused increased skepticism in candidate states, and have caused EU conditionality to weaken in recent years. Strengthening the internal institutions of the Union would increase its ability to exert strong conditionality measures, and, in turn, incentivize local leaders and movements to work toward European integration.

Adjust the Carrot-and-Stick Approach

As shown in prior chapters, there are frequent inconsistencies in the EU's application of conditionality. Additionally, a lack of specified sanctions for undemocratic and divisive leaders have created a culture of impunity. By creating more short-term rewards and sanctions that have a significant impact on political leaders and applying this carrot-and-stick approach consistently, the EU can strengthen its conditionality approach.

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[84] Interviews with two students at the Faculty of Security Studies and one at the Faculty of Physics of the University of Belgrade who are highly involved in planning the protests. Interviewees requested anonymity due to threats made by Serbian government toward the students. March 2025. Mount Holyoke College.
[85] Ibid.

Forgiveness for mass atrocities and reconciliation between formerly warring ethnic groups cannot necessarily by implemented through policy. However, this is more likely to occur in democratic, transparent, and open societies, and this is where the EU can have a strong, positive influence. By allowing for more local governance, strengthening its own internal institutions, and adjusting its conditionality approach, the EU can promote democratization in the region, which in turn may result in more transparent and justice-oriented regimes.

Opportunities for Future Research

Considering that European integration and transitional justice in the Western Balkans are both open and ongoing issues, further research will be necessary to track future developments. In particular, the new administration in Montenegro offers hope for positive developments in the region. The rightward shift in Croatia and how the EU will (or will not) respond, warrants further analysis on the EU's ability to keep states democratic and free after they have become members. The question of Serb secession in BiH and the ongoing legal challenges facing Dodik call into question the viability and sustainability of BiH under Dayton: a question that scholars have been cautious to approach due to the delicate nature of this issue. However, considering the increasingly bold stance taken by Serb secessionists and the ongoing issues of government inefficiency under the DPA, scholars must take a more proactive approach to creating a more sustainable vision for Bosnian governance. Lastly, the student movement in Serbia, which demands accountability from their corrupt government, seeks to promote change both throughout the country and the region. Their decentralized, plenum-based movement exemplifies the very direct form of the democracy they advocate for (Ignjatovic 2025). This deserves further research both for its regional implications and in the democracy studies field more generally.

In addition to the region-specific research needed on these issues, further examination of the broader subject of this thesis is necessary. This entails research on international organizations' abilities to influence beneficiary states' internal domestic politics through conditionality policies, particularly as it pertains to democratization, human rights, and transitional justice. It is necessary to expand on the existing literature on norm cascades and compliance to understand the factors that contribute to success (or lack of) conditionality policies, especially in post-conflict settings. Cases in which this research would be highly applicable include Israel/Palestine/Lebanon, Syria, and Ukraine. As these countries emerge from conflict and stabilize, the international community will no doubt be highly involved in implementing transitional justice and democratic reforms. Application of this thesis's typological framework and findings can aid scholars and policymakers seeking to promote reconciliation and justice in post-conflict settings around the world.

As shown in this thesis, no case implements transitional justice fully—there are always flaws and contradictions. Further study of other transitional justice cases, including post-Soviet Eastern Europe, the Middle East, South Africa, and Latin America, will likely show a similar range from non-compliance to cooperative compliance. We have yet to find a perfect formula for the implementation of transitional justice, and we likely never will as each case exists within its own unique context. However, as long as violence, division, and war continue to play a role in international politics, as scholars, our efforts to study transitional justice represent our commitment to the ideals of justice, truth, reconciliation, and peace.

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